code of federal regulations

Public Welfare

45

PART 1200 TO END

Revised as of October 1, 1996

CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT

AS OF OCTOBER 1, 1996

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Table of Contents

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To cite the regulations in this volume use title, part and section number. Thus, 45 CFR 1201.735–101 *refers to title 45, part 1201, section 735–101.*

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
Title 28 through Title 41.....as of July 1
Title 42 through Title 50.....as of October 1

The appropriate revision date is printed on the cover of each volume.

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RICHARD L. CLAYPOOLE,
Director,
Office of the Federal Register.

October 1, 1996.

THIS TITLE

Title 45—PUBLIC WELFARE is composed of four volumes. The parts in these volumes are arranged in the following order: Parts 1–199, 200–499, 500–1199, and 1200 to end. Volume one (parts 1–199) contains all current regulations issued under subtitle A—Department of Health and Human Services, General Administration. Volume two (parts 200–499) contains all current regulations issued under subtitle B—Regulations Relating to Public Welfare, chapter II—Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services, chapter III—Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services, and chapter IV—Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services. Volume three (parts 500–1199) contains all current regulations issued under chapter V—Foreign Claims Settlement Commission of the United States, Department of Justice, chapter VI—National Science Foundation, chapter VII—Commission on Civil Rights, chapter VIII—Office of Personnel Management, chapter X—Office of Community Services, Administration for Children and Families, Department of Health and Human Services, and chapter XI—National Foundation on the Arts and the Humanities. Volume four (part 1200 to end) contains all current regulations issued under chapter XII—ACTION, chapter XIII—Office of Human Development Services, Department of Health and Human Services, chapter XVI—Legal Services Corporation, chapter XVII—National Commission on Libraries and Information Science, chapter XVIII—Harry S Truman Scholarship Foundation, chapter XXI—Commission of Fine Arts, chapter XXII—Christopher Columbus Quincentenary Jubilee Commission, chapter XXIII—Arctic Research Commission, chapter XXIV—James Madison Memorial Fellowship Foundation, and chapter XXV—Corporation for National and Community Service. The contents of these volumes represent all of the current regulations codified under this title of the CFR as of October 1, 1996.

A subject index to 45 CFR parts 680–684 appears in the Finding Aids section of the volume containing parts 500–1199. Those amendments to part 801—Voting Rights Program, Appendixes A, B, and D, which apply to Texas also appear in Spanish following Appendix D.

Redesignation tables appear in the Finding Aids section of volumes one and four.

For this volume Gwendolyn J. Henderson was Chief Editor. The Code of Federal Regulations publication program is under the direction of Richard L. Claypoole, assisted by Alomha S. Morris.

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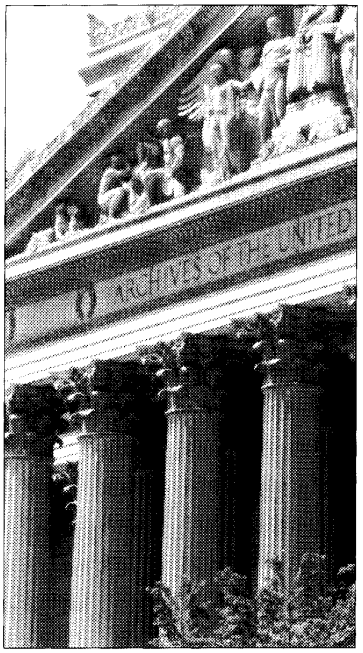

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Title 45—Public Welfare

(This book contains part 1200 to end)

SUBTITLE B—REGULATIONS RELATING TO PUBLIC WELFARE—Continued

Subtitle B—Regulations Relating to Public Welfare (Continued)

CHAPTER XII—ACTION

PART 1201—STANDARDS OF CONDUCT

Subpart A—General

Subpart B—General Conduct and Responsibilities of Employees

Subpart C—Outside Employment, Activities, and Associations

Subpart D—Procedures for Submission by Employees and Review of Statements of Employment and Financial Interests

AUTHORITY: E.O. 11222 of May 8, 1965, 30 FR 6469, 3 CFR 1964–1965, Supp., p. 306, 5 CFR 735.104.

SOURCE: 43 FR 46022, Oct. 5, 1978, unless otherwise noted.

Subpart A—General

§ 1201.735–101 Introduction.

(a) Executive Order No. 11222 directs the Civil Service Commission to require each agency head to review and reissue his or her agency's regulations regarding the ethical conduct and other responsibilities of all its employees. One of the main purposes of the regulations in this part is to encourage individuals faced with questions involving subjective judgment to seek counsel and guidance. The general counsel is designated to be the counselor for ACTION with respect to these matters. Associate and assistant general counsels are designated to be deputy counselors. They will provide authoritative advice and guidance in this area to any ACTION employee who seeks it.

(b) The ACTION Committee on Conflict of Interests will review and monitor the agency's policies and procedures on conflict of interests. The committee shall consist of the general counsel, the Assistant Director of Administration and Finance, the Assistant Director of the Office of Compliance, the Director of Contracts and Grants Management Division, a Deputy Associate Director of Domestic Operations, a Deputy Associate Director for International Operations, a Deputy Assistant Director for the Office of Policy and Planning, and the Director's designee, who shall be a nonvoting member. The committee shall have the authority to:

(1) Adopt the procedures necessary to insure the implementation of and compliance with the conflict of interest regulations found at §§ 1201.735–301 through 1201.735–305.

(2) Issue interpretive opinions or clarifying statements on actual or hypothetical situations involving the provisions of §§ 1201.735–301 through 1201.735–305.

(3) Accept and review reports filed under § 1201.735–302(b).

(4) Grant specific relief from the provisions of §§ 1201.735–303 through 1201.735–305 by a majority vote of the committee, if, after due consideration, the committee finds that:

(i) No actual conflict of interest exists, and

(ii) The purpose of the rule would not be served by its strict application, and

(iii) A substantial inequity would otherwise occur. In each such case the committee shall issue a written decision setting forth its findings as required above. The committee may make any exception subject to such conditions and restrictions as it deems appropriate.

(c) Any violation of the regulations in this part may be cause for disciplinary action. Violation of those provisions of the regulations in this part which reflect legal prohibitions may also entail penalties provided by law.

(d) This part applies to all employees of ACTION. ''Employee'' as used in this part includes regular employees, Presidential appointees, ''special Government employees,'' experts, and consultants whether employed on a full-time or intermittent basis.

§ 1201.735–102 Definitions.

(a) *Special Government employee* as used herein means a person appointed or employed to perform temporary duties for ACTION with or without compensation, on a full-time or intermittent basis, for not to exceed 130 days during any period of 365 days.

(b) *Regular Government employee* as used herein means any officer or employee other than a special Government employee.

(c) *Organization* as used herein includes profit and nonprofit corporations, associations, partnerships, trusts, sole proprietorships, foundations, and State and local government units.

(d) *Grantee* as used herein means any organization that receives financial assistance from ACTION including the assignment of volunteers.

(e) *Potential Grantee or Contractor* means any organization that has submitted a proposal, application, or otherwise indicated in writing its intent to apply for or seek a specific grant or contract.

(f) *Associated with* means:

(1) That the person is a director of the organization or is a member of a board or committee which exercises a recommending or supervisory function in connection with an ACTION project;

(2) That the person or his or her spouse, minor child or other member of his or her immediate household, serves as an employee, officer, owner, trustee, partner, consultant, or paid adviser (general membership in an organization is not included within the definition of *associated with*);

(3) That the person, his or her spouse, minor child, or other member of his or her immediate household, owns, individually or collectively, 1 percent or more of the voting shares of an organization;

(4) That the person, his or her spouse, minor child, or other member of his or her immediate household, owns, individually or collectively, either beneficially or as trustee, a financial interest in an organization through stock, stock options, bonds, or other securities, or obligations, valued at $50,000 or more; or

(5) That a person has a continuing financial interest in an organization, such as a bona fide pension plan, valued at $5,000 or more, through an arrangement resulting from prior employment or business or professional association.

The term *associated* does not include an indirect interest, such as ownership of shares in a mutual fund, bank or insurance company, which in turn owns an interest in an organization which has, or is seeking or under consideration for a grant or contract. Such and *indirect* interest, as well as financial interests of amounts less than those stated in paragraphs (f) (3) through (5) of this section, are hereby determined pursuant to 18 U.S.C. 208(b)(2) to be too remote to affect the integrity of the employee's services.

Subpart B—General Conduct and Responsibilities of Employees

§ 1201.735–201 Proscribed actions—Executive Order 11222.

As provided by the President in Executive Order No. 11222, whether specifically prohibited by law or in the regulations in this part, no U.S. regular or special Government employees shall take any action which might result in, or create the appearance of:

(a) Using public office or employment for private gain, whether for themselves or for another person, particularly one with whom they have family, business, or financial ties.

(b) Giving preferential treatment to any person.

(c) Impeding Government efficiency or economy.

(d) Losing complete independence or impartiality.

(e) Making a Government decision outside official channels.

(f) Affecting adversely the confidence of the public in the integrity of the Government.

(g) Using Government office or employment to coerce a person to provide financial benefit to themselves or to other persons, particularly anyone with whom they have family, business or financial ties.

§1201.735–202 General conduct prejudicial to the Government.

An employee may not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct prejudicial to the Government (5 CFR 735.209).

§1201.735–203 Criminal statutory prohibitions—Conflict of interest.

(a) *Regular Government employees.* Regular employees of the Government are subject to the following major criminal prohibitions:

(1) They may not, except in the discharge of their official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest. This prohibition applies to both paid and unpaid representation of another (18 U.S.C. 205).

(2) They may not, after Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which they participated personally and substantially for the Government (18 U.S.C. 207).

(3) They may not for 1 year after their Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of their official responsibility during their last year of Government service. This temporary restraint gives way to the permanent restraint described in paragraph (a)(3) of this section if the matter is one in which the employee participated personally and substantially (18 U.S.C. 207).

(4) They may not receive any salary, or supplementation of their Government salary, from a private source as compensation for services to the Government (18 U.S.C. 209).

(b) *Special Government employees.* Special Government employees are subject to the following major criminal prohibitions:

(1) They may not, except in the discharge of official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest and in which they have at any time participated personally and substantially for the Government (18 U.S.C. 205).

(2) They may not, except in the discharge of official duties, represent anyone else in a matter pending before the agency they serve unless they have served there no more than 60 days during the past 365. They are bound by this restraint despite the fact that the matter is not one in which they have ever participated personally and substantially (18 U.S.C. 205). (See §1201.735–303(b) for additional nonstatutory Agency restrictions on a special employee representing any other person or organization in a matter pending before the Agency.) The restrictions described in paragraphs (b)(1) and (2) of this section apply to both paid and unpaid representation of another.

(3) They may not participate in their governmental capacity in any matter in which they, their spouse, minor child, outside business associate, or persons with whom they are negotiating for employment have a financial interest (18 U.S.C. 208).

(4) They may not, after their Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which they participated personally and substantially for the Government (18 U.S.C. 207).

(5) They may not, for 1 year after their Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of their official responsibility during their last year of Government service. This temporary restraint gives way to the permanent restriction described in paragraph (b)(4) of this section if the matter is one in which they participated personally and substantially (18 U.S.C. 207).

Subpart C—Outside Employment Activities and Associations

§ 1201.735–301 In general.

(a) There is no general prohibition against ACTION employees holding outside employment, including teaching, lecturing, or writing. But no employee may engage in outside employment or associatons if they might result in a conflict or an appearance of conflict between the private interests of the employee and his or her official responsibility.

(b) An employee shall not receive any salary or anything of monetary value from a private source as compensation for his or her services to the Government (18 U.S.C. 209).

(c) An employee shall not have a direct or indirect financial interest that conflicts substantially or appears to conflict substantially with his or her Government duties and responsibilities. Nor may an employee engage in, directly or indirectly, a financial transaction as a result of or primarily relying on information obtained through his or her Government employment.

§ 1201.735–302 Association with a potential grantee or contractor prior to ACTION employment.

(a) No employee, or any person subject to his or her supervision, may participate in the decision to award a grant or a contract to an organization with which that employee has been associated in the past 2 years. When an employee becomes aware that such an organization is under consideration for or has applied for a grant or a contract with the Agency, the employee shall notify his or her immediate supervisor in writing. The supervisor shall take whatever steps are necessary to exclude the employee from all aspects of the decision processes regarding the grant or contract.

(b) When the Director, Deputy Director, or an Associate or Assistant Director, becomes aware that an organization with which he or she has been associated in the past 2 years is under consideration for or has applied for a grant or contract with the Agency, he or she shall refrain from participating in the decision process and immediately notify the Assistant Director of the Office of Compliance, who shall select an independent third party, not in any way connected or associated with the concerned official. The third party shall participate in and review the decision process to the extent he or she deems necessary to insure objectivity and the absence of favoritism. Said third party shall preferably be a person experienced in the area of government contracts and grants. The third party shall file a report in writing with the Committee on Conflict of Interest stating his or her conclusions, observations, or objections, if any, to the decision process concerning the grant or contract, which document shall be attached to and become a part of the official file.

§ 1201.735–303 Association with ACTION grantee or contractor or potential grantee or contractor while an ACTION employee.

(a) No regular employee may be associated with any ACTION grantee, contractor, or potential grantee or contractor. Any organization that is associated with a regular employee shall be suspended from consideration as a grantee or contractor.

(b) No regular or special employee, except in his or her official capacity as an ACTION employee, shall either participate in any way on behalf of any orgainzation in the preparation or development of a grant or contract proposal involving ACTION or represent any other organization in a matter pending before ACTION. In the event that a regular or special employee participates while an employee of ACTION in any aspect of the development of a

grant or contract proposal on behalf of an organization, or represents another organization in a matter pending before ACTION, that organization shall be suspended from consideration for the grant or contract.

(c) No regular or special employee who, prior to his or her employment at ACTION, participated in the development of a grant or contract proposal on behalf of another organization, shall participate as an ACTION employee, in any aspect of the decision process regarding that grant or contract, or, if the grant or contract is awarded, in any oversight or management capacity in relation to that grant or contract. In addition, any such grant or contract shall only be awarded through a competitive process. In the event a regular or special employee who participated in the development of the grant or contract proposal prior to being employed at ACTION does participate as an ACTION employee in the decision process for such grant or contract, the organization shall be suspended from consideration.

(d) If a special employee participates as an employee of ACTION in any aspect of the development of a proposal or project, whether or not such participation is minimal or substantial, any organization with which he or she is associated shall be suspended from consideration for the grant or contract.

(e) If an organization with which a special employee is associated submits a proposal for a grant or contract, and the special employee did not participate either as an employee of ACTION or an associate of the organization in any aspect of the project or proposal or the application therefor, the matter shall be referred to the Committee on Conflict of Interests for determination. The Committee shall consider the following factors and any others it deems relevant:

(1) The nature, length, and origin of the special employee's relationship with the Agency, the nature and scope of the employees's duties and responsibilities, the division or office to which the employee is assigned, and whether the employee's duties are in any way related to the proposed grant or contract.

(2) The nature, length, and type of the employee's relationship with the organization, whether the employee's position involves policy making or supervision of other employees and the relationship of the position with the organization to the work to be performed under the proposed grant or contract.

(3) Whether awarding the grant or contract to the organization would result in the appearance of or the potential for a conflict of interest.

(4) The process to be used in awarding the grant or contract.

(f) If a special employee wishes to become or remain associated with an ACTION grantee or contractor while he or she is an employee of ACTION, subject to the restrictions paragraphs (b) through (e) of § 1201.735–303, the matter shall be referred to the Committee on Conflict of Interests for determination. The Committee shall consider the following factors and any others it deems relevant:

(1) The nature, length, and origin of the special employee's relationship with the Agency, the nature and scope of the employee's duties and responsibilities, the division or office to which the employee is assigned, and whether the employee's duties are in any way related to the grant or contract.

(2) The nature, length, and type of the employee's relationship with the organization, whether the employee's position involves policymaking or supervision of other employees and the relationship of the position with the organization to the work to be performed under the proposed grant or contract.

(3) Whether such a relationship would result in the appearance of or the potential for a conflict of interest.

(g) Any suspension involving proposed contracts under this rule shall be in accordance with procedures set forth in 41 CFR 1–1.600 et seq.

§ 1201.735–304 Employment after leaving ACTION.

(a) Employees may negotiate for prospective employment with non-Government organizations only when they have no duties as ACTION employees which could affect that organization's

interest, or after they have disqualified themselves, on the written permission of their supervisor, from such duties.

(b) For 1 year after leaving ACTION, no regular or special employee may serve pursuant to a personal or nonpersonal services contract or accept employment with an ACTION grantee or contractor for a position in which he or she would be working in any activity supported in whole or in part by ACTION funds received under an ACTION program which was within the boundaries of the employee's official responsibility or in which he or she participated personally while employed at ACTION.

(c) If, within 1 year after leaving ACTION, an individual accepts employment in violation of this rule, ACTION will disallow the costs allocated under the grant or contract for that position. In addition, a letter describing the violation will be placed in the employee's personnel file.

§ 1201.735–305 Employment with ACTION grantee or contractor.

An employee of an ACTION grantee or contractor who is compensated directly or indirectly from ACTION funds will be ineligible to be compensated under any personal or nonpersonal services contract with this Agency which will result in the employee being paid twice for the same time or product.

§ 1201.735–306 Association with non-ACTION grantee or contractor while an ACTION employee.

(a) An employee shall not engage in outside employment which tends to impair the employee's mental or physical capacity to perform his or her official responsibility in an acceptable manner.

(b) *Teaching, lecturing, and writing.* (1) *Use of information.* An employee shall not, either for or without compensation, engage in teaching, lecturing, or writing that is dependent on information obtained as a result of his or her Government employment, except when that information has been or on request will be made available to the general public or when the agency head gives advance written authorization for the use of nonpublic information on the basis that the proposed use is in the public interest.

(2) *Compensation.* No employee may accept compensation or anything of value for any lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the ACTION programs or which draws substantially on official data or ideas which have not become part of the body of public information.

(3) *Clearance of publications.* No employee may submit for publication any writing, other than recruiting information, the contents of which are devoted to the ACTION programs or to any other matter which might be of official concern to the U.S. Government without in advance clearing the writing with the Office of Communications or regional communications specialists, as appropriate. Before clearing any such writing, the Office of Communications will consult with the appropriate ACTION office.

(c) *State and local government employment.* Regular employees may not hold office or engage in outside employment under a State or local government except with prior approval of the General Counsel, ACTION.

(d) All employees not required by § 1201.735–401 to report their outside employment and financial interests shall inform their supervisors of all outside employment they hold or accept.

§ 1201.735–307 Gifts, entertainment, and favors.

(a) *From donors dealing with ACTION.* (1) No regular or special employees may solicit or accept, directly or indirectly, for themselves, for any member of their family, or for any person with whom they have business or financial ties, any gift, gratuity, favor, entertainment, or loan or any other thing of value, from any individual or organization which:

(i) Has, or is seeking to obtain, contractual or other business or financial relations with ACTION;

(ii) Has interests that may be substantially affected by the performance or nonperformance of the employee's official responsibility;

(iii) Is in any way attempting to affect the employee's exercise of his or her official responsibility; or

(iv) Conducts operations or activities that are regulated by ACTION.

(2) Paragraph (a)(1) of this section does not prohibit, even if the donor has dealings with ACTION:

(i) Acceptance of things of value from parents, children, or spouse if those relationships rather than the business of the donor is the motivating factor for the gift;

(ii) Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of breakfast, luncheon, or dinner meeting or other meetings;

(iii) Solicitation and acceptance of loans from banks or other financial institutions to finance proper and usual activities of employees, such as home mortgage loans, solicited and accepted on customary terms;

(iv) Acceptance on behalf of minor dependents of fellowships, scholarships, or educational loans awarded on the basis of merit and/or need;

(v) Acceptance of awards for meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization.

(3) Regular or special employees need not return unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other things of nominal intrinsic value.

(b) *From other ACTION employees.* No employees in superior official positions may accept any gifts presented as contributions from employees receiving less salary than themselves. No employees shall solicit contributions from other employees for a gift to an employee in a superior official position, nor shall any employees make a donation as a gift to an employee in a superior official position. However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(c) *From foreign governments.* No regular employee may solicit or, without the consent of the Congress, receive any present, decoration, emolument, pecuniary favor, office, title, or any other gift from any foreign government. See 5 U.S.C. 7342; Executive Order 11320; and 22 CFR part 3 (as added, 32 FR 6469).

(d) *Gifts to ACTION.* Gifts to the United States or to ACTION may be accepted in accordance with ACTION regulations.

(e) *Reimbursement for expenses.* Neither this section nor §1201.735–310(a) precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part and for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits. Nor does it allow an employee to receive non-Government reimbursement of travel expenses for travel on official business under ACTION orders; but rather, such reimbursement, if any, should be made to ACTION and amounts received should be credited to its appropriation. If an employee receives accommodations, goods, or services in kind from a non-Government source, this item or items will be treated as a donation to ACTION and an appropriate reduction will be made in per diem or other travel expenses payable.

§1201.735–308 Economic and financial activities of employees abroad.

(a) *Prohibitions in any foreign country.* A U.S. citizen employee abroad is specifically prohibited from engaging in the activities listed below in any foreign country:

(1) Speculation in currency exchange;

(2) Transactions at exchange rates differing from local legally available rates, unless such transactions are duly authorized in advance by the agency;

(3) Sales to unauthorized persons (whether at cost or for a profit) of currency acquired at preferential rates through diplomatic or other restricted arrangements;

(4) Transactions which entail the use, without official sanction, of the diplomatic pouch;

(5) Transfers of funds on behalf of blocked nationals, or otherwise in violation of U.S. foreign funds and assets control;

(6) Independent and unsanctioned private transactions which involve an employee as an individual in violation of applicable control regulations of foreign governments;

(7) Acting as an intermediary in the transfer of private funds from persons in one country to persons in another country, including the United States;

(8) Permitting use of one's official title in any private business transactions or in advertisements for business purposes.

(b) *Prohibitions in country of assignment.* (1) A U.S. citizen employee shall not transact or be interested in any business or engage for profit in any profession or undertake other gainful employment in any country or countries to which he or she is assigned or detailed in his or her own name or through the agency of any other person.

(2) A U.S. citizen employee shall not invest in real estate or mortgages on properties located in his or her country of assignment. The purchase of a house and land for personal occupancy is not considered a violation of this paragraph.

(3) A U.S. citizen employee shall not invest money in bonds, shares, or stocks of commercial concerns headquartered in his or her country of assignment or conducting a substantial portion of business in such country. Such investments, if made prior to knowledge of assignment or detail to such country or countries, may be retained during such assignment or detail.

(4) A U.S. citizen employee shall not sell or dispose of personal property, including automobiles, at prices producing profits which result primarily from import privileges derived from his or her official status as an employee of the U.S. Government.

§ 1201.735–309 Information.

(a) Release of information to press.

(1) Regular or special employees shall not withhold information from the press or public unless that information is classified or administratively controlled (limited official use). All responses to requests for information from the press should be referred to the Office of Communications or regional communications officers as appropriate who will be responsible for all releases. Regular and special employees should be certain that information given to the press and public is accurate and complete.

(2) Any questions as to the classification or administrative control of information should be referred to the general counsel.

(3) No regular or special employee may record by electronic or other device any telephone or other conversation. No regular or special employee may listen in on any telephone conversation without the consent of all parties thereto.

(b) Disclosure and misuse of inside information. No employee may, directly or indirectly, disclose or use for his or her own benefit, or for the private benefit of another, inside information as described in paragraph (c) of this section. The use of such information by an employee is restricted to the proper performance of his or her official duties. The disclosure of such information is restricted to official ACTION channels unless disclosure is authorized by the Director, the Deputy Director, an Associate Director, or a Regional Director of ACTION. In particular, no employee may:

(1) Engage in, directly or indirectly, a financial transaction as a result of or primarily relying on such information; or

(2) Publish any book or article, or deliver any speech or lecture, based on or using such information.

(c) Definition: The term ''inside information'' as used in this section means, generally, information obtained under Government authority which is not known by the general public and which could affect the rights or interests of the Government or of a non-Government organization or person. Such information includes information about ACTION operations or administration, and personnel which could influence someone's dealing with ACTION.

(d) This section is not intended to discourage the disclosure through proper channels of information which has been or should be made public, or which is by law to be made available to the public. Also, employees are encouraged to teach, lecture, and write, provided they do so in accordance with the provisions of this section and §§1201.735–301, and 1201.735–306.

§1201.735–310 Speeches; participation in conferences.

(a) *Fees and expenses.* (1) Although an employee may not accept a fee for his or her own use or benefit for making a speech, delivering a lecture, or participating in a discussion if the subject is ACTION or ACTION programs or if such services are part of the employee's official ACTION duties, the employee may suggest that the amount otherwise payable as a fee or honorarium be contributed to ACTION.

(2) When a meeting, discussion, etc., to which paragraph (a)(1) of this section refers takes place at a substantial distance from the employee's home he or she may accept reimbursement for the actual cost of transportation and necessary subsistence, or expenses, but in no case shall he or she receive any amount for personal benefit. Such reimbursements shall be reported by the employee to his or her immediate supervisors.

(3) An employee may accept fees for speeches, etc., dealing with subjects other than ACTION or ACTION programs when no official funds have been used in connection with his or her appearance and such activities do not interfere with the efficient performance of his or her duties.

(b) *Racial segregation.* No employee may participate for ACTION in conferences or speak for ACTION before audiences where any racial group has been segregated or excluded from the meeting, from any of the facilities or conferences, or from membership in the organization sponsoring the conference or meeting.

(1) When a request for ACTION speakers or participation is received under circumstances where segregation may be practiced, the Director of the Office of Communications shall make specific inquiry as to the practices of the organization before the request is filled.

(2) If the inviting organization shows a willingness to modify its practices for the occasion, ACTION will cooperate in such efforts.

(3) Exceptions to this paragraph may be made only by the Director, ACTION and in his or her discretion.

§1201.735–311 Partisan political activities.

(a) Prohibited activities: No employee may:

(1) Use his or her official authority or influence for the purpose of interfering with an election or affecting the result thereof; or

(2) Take any active part in partisan political management or in political campaigns, except as may be provided by or pursuant to statute 5 U.S.C. 7324.

(b) Intermittent employees: Persons employed on an irregular or occasional basis are subject to paragraph (a) of this section only while in active duty status and for the 24 hours of any day of actual employment.

(c) Excepted activities: Paragraph (a) of this section does not apply to:

(1) Nonpartisan campaigns and elections in which none of the candidates is to be nominated by or elected as representing a national or State political party, such as most school board elections; or

(2) Political activities connected with questions of public interest which are not specifically identified with national or State political parties, such as constitutional amendments, referenda, and the like (5 U.S.C. 7326).

(d) Excepted communities: Paragraph (a) of this section does not apply to employees who are residents of certain communities. These communities, which have been designated by the Civil Service Commission (5 CFR 733.301), consist of a number of communities in suburban Washington, DC, and a few communities elsewhere in which a majority of the voters are Government employees. Employees who are residents of the designated communities may be candidates for, or campaign for others who are candidates for, local office if they or the candidates for whom they are campaigning are running as independent candidates.

An employee may hold local office only in accordance with §§ 1201.735–301 through 1201.735–306 relating to outside employment and associations.

(e) Special Government employees are subject to the statute for the 24 hours of each day on which they do any work for the Government.

(f) While regular employees may explain and support governmental programs that have been enacted into law, in exercising their official responsibilities they should not publicly support or oppose pending legislation, except in testimony required by the Congress.

(g) The Foreign Service Act generally prohibits any Foreign Service employee from:

(1) Corresponding in regard to the public affairs of any foreign government, except with the proper officers of the United States; and

(2) Recommending any person for employment in any position of trust or profit under the government of the country to which he or she is detailed or assigned.

§ 1201.735–312 Use of Government property.

A regular or special employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government for other than officially approved activities. All employees have a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to them. By law, penalty envelopes may be used only for official Government mail.

§ 1201.735–313 Indebtedness.

ACTION considers the indebtedness of its employees to be a matter of their own concern and will not function as a collection agency. Nevertheless, a regular or special employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. For the purpose of this section, a ''just financial obligation'' means one acknowledged by the employee or reduced to judgment by a court, or one imposed by law such as Federal, State or local taxes, and ''in a proper and timely manner'' means in a manner which the agency determines does not, under the circumstances, reflect adversely on the Government as his or her employer. In the event of a dispute between an employee and an alleged creditor, this section does not require ACTION to determine the validity or amount of the disputed debt.

§ 1201.735–314 Gambling, betting, and lotteries.

A regular or special employee shall not participate, while on Government owned or leased property or while on duty for the Government in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket.

§ 1201.735–315 Discrimination.

No regular or special employee may make inquiry concerning the race, political affiliation, or religious beliefs of any employee or applicant in connection with any personnel action and may not practice, threaten, or promise any action against or in favor of an employee or applicant for employment because or race, color, religion, sex, or national origin and in the competitive service on the basis of politics, marital status, or physical handicap.

§ 1201.735–316 Related statutes and regulations.

Each employee should be aware of the following related statutes and regulations:

(a) House Concurrent Resolution 175, 8th Congress, second session, 72A Stat. B12, the ''Code of Ethics for Government Service.''

(b) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(c) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(d) The prohibition against accepting honorariums of more than $2,000 per speech, appearance or article or aggregating more than $25,000 in any calendar year (2 U.S.C. 441i).

(e) The prohibitions against: (1) The disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the

disclosure of confidential information (18 U.S.C. 1905).

(f) The provisions relating to the habitual use of toxicants to excess (5 U.S.C. 7352).

(g) The prohibition against the misuses of a Government vehicle (31 U.S.C. 638(a) (c)).

(h) The prohibition against the misuses of the franking privilege (18 U.S.C. 1719).

(i) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(j) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(k) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(l) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(m) The prohibitions against: (1) Embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his or her employment (18 U.S.C. 654).

(n) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(o) The prohibitions against political activities in subchapter III of chapter 73 of title 5, United States Code, and 18 U.S.C. 602, 603, 607, and 608.

(p) The prohibition against gifts to employee's superiors and the acceptance thereof (Rev. Stat. 1784, 5 U.S.C. 113).

(q) Chapter 11 of title 18, United States Code, relating to bribery, graft, and conflicts of interest, which is specifically applicable to special Government employees as well as to regular employees.

(r) The prohibitions against: (1) Accepting gifts from foreign governments; (2) engaging in business abroad; (3) corresponding on the affairs of foreign governments; and (4) discrimination on political, racial, or religious grounds contained in sections 1002 through 1005 of the Foreign Service Act of 1946, as amended.

(s) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(t) The prohibition against appointing or advocating the appointment of a relative to a position within the Agency (5 U.S.C. 3110).

Subpart D—Procedures for Submission by Employees and Review of Statements of Employment and Financial Interests

§ 1201.735–401 Submission of statements.

(a) (1) Regulations of the Civil Service Commission (5 CFR part 735) require ACTION to adopt regulations providing for the submission of statements of employment and financial interests from certain regular ACTION employees and all special ACTION employees.

(2) All special employees and those regular employees designated in paragraph (b) of this section shall complete statements of employment and financial interests and submit them to the Office of General Counsel not later than 5 days after their entrance on duty. The Director of Personnel Management shall be responsible for supplying all new employees with the necessary forms either prior to or on the first day of their employment.

(3) The statement of employment and financial interests shall include information on organizations with which the employee was associated during the 2 years prior to his or her employment by ACTION, as well as information about current associations. Special employees shall also indicate to the best of their knowledge which organizations listed currently on their form have contracts with or grants from ACTION, or are applying for ACTION contracts or grants. If any information required to be included on the statement, including holdings placed in trust, is not known to an employee but is known to another person, he or she is required to request that other person to submit information on his or her behalf.

(4) Changes in or additions to the information contained in a regular or special employee's statement must be reported in a supplementary statement as of June 30 each year. The Director of Personnel Management shall be responsible for insuring that such supplementary statements are submitted by June 30. If there are no changes or additions, a negative report is required. Notwithstanding the filing of the annual report required by this paragraph, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a conflict of interest and a violation of the conflict-of-interest provisions of section 208 of title 18, United States Code, or the conflict-of-interest provisions of this part.

(5) In the case of temporary summer employees hired at FSR–7 or equivalent and below to perform duties other than those of an expert or consultant, the reporting requirement will be waived. It may also be waived by the Director of Personnel Management with respect to other appointments, except as experts or consultants, upon a finding that the duties of the position held by the special Government employee are of a nature and at such a level of responsibility that the reporting of employment and financial interests is not necessary to protect the integrity of the Government.

(6) Regular or special employees are not required to submit in a statement of employment and financial interests or supplementary statements any information about their connection with or interest in a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization not conducted as a business enterprise. For this purpose, any organizations, doing work involving or potentially involving grants of money from or contracts with the Government are considered business enterprises and are required to be included in a regular or special employee's statement of employment and financial interests.

(7) The statements of employment and financial interests and supplementary statements required are in addition, and not in substitution for or in designation of, any similar requirement imposed by law, order, or regulation. The submission of a statement of supplementary statement by an employee does not permit him or her or any other person to participate in a matter in which his or her or other persons' participation is prohibited by law, order, or regulations.

(8) A regular employee who believes that his or her position has been improperly included under ACTION regulations as one requiring the submission of a statement of employment and financial interests shall be given an opportunity for review through ACTION's grievance procedures to determine whether the position has been improperly included.

(b) Statements shall be submitted by the following employees:

(1) Office of the Director:

(i) Director.

(ii) Deputy Director.

(iii) Executive Officer.

(iv) Special Assistants to Director and Deputy.

(v) Executive Assistants to Director and Deputy.

(2) Office of Domestic and Anti-Poverty Operations:

(i) Associate Director.

(ii) Deputy Associate Directors.

(iii) Special Assistants to Associate Director and to Deputy Associate Directors.

(iv) Supervisory program specialists.

(v) Program specialists and analysts.

(vi) Regional Directors.

(vii) Deputy Regional Directors.

(viii) Regional training chiefs.

(ix) Regional staff members with contracting and disbursing authority.

(x) Regional program operations officers.

(xi) State program directors.

(xii) State program officers.

(xiii) Deputy Directors, VISTA, and OAVP.

(3) Office of Administration and Finance:

(i) Assistant Director.

(ii) Deputy Assistant Director.

(iii) Director, Management and Organization.

(iv) Director, Administrative Services.

(v) Chief, Paperwork and Management.

(vi) Chief, Transportation.

(vii) Chief, Communications and Property.
(viii) Director, Accounting Division.
(ix) Chief, Fiscal Services.
(x) Chief, Accounting Operations.
(xi) Cashier.
(xii) Director, Personnel Management.
(xiii) Deputy Director, Personnel Management.
(xiv) Director, Health Services.
(xv) Director, Contracts and Grants Management.
(xvi) Chief, Procurement Division.
(xvii) Contract specialists, negotiators, and administrators.
(xviii) Purchasing agents.
(xix) Chief, Grants Division.
(xx) Senior Grants Administrator.
(xxi) Grants Administrator.
(xxii) Director, Computer Services.
(xxiii) Director, Staff Training and Development.
(4) Office of Recruitment and Communications:
(i) Assistant Director.
(ii) Deputy Assistant Director.
(iii) Special Assistant to Assistant Director.
(iv) Director, Planning and Evaluation.
(v) Director, Recruitment Resources.
(vi) Director, Office of Communications.
(vii) Director, Public Affairs.
(viii) Director, Creative Services.
(5) Office of Voluntary Citizen Participation:
(i) Assistant Director.
(ii) Director program operations.
(iii) Director, International and Special Assistance.
(iv) Program specialists.
(v) Director, School Partnership program.
(6) Office of the General Counsel:
(i) General Counsel.
(ii) Deputy General Counsel.
(iii) Associate General Counsels.
(iv) Assistant General Counsels.
(7) Office of Policy and Planning:
(i) Assistant Director.
(ii) Deputy Assistant Director.
(iii) Special Projects Officer.
(iv) Director, Budget Division.
(v) Director, Policy Development.
(vi) Director, Evaluation.
(vii) Director, Planning.
(viii) Special Assistants to Assistant Director.
(ix) Program analysts.
(x) Policy development analysts.
(xi) Supervisory program specialists.
(xii) Evaluation specialists.
(8) Office of Legislative and Governmental Affairs:
(i) Assistant Director.
(9) Office of Compliance:
(i) Assistant Director.
(ii) Inspector General.
(iii) Auditors, inspectors, program operations analysts.
(iv) Director, Division of Equal Opportunity.
(10) Office of International Operations:
(i) Associate Director.
(ii) Deputy Associate Directors.
(iii) Director, Programing and Training.
(iv) Director, Multilateral and Special programs.
(v) Director, Special Services.
(vi) Director, Office of Management.
(vii) Director, Office of Peace Corps Volunteer Placement.
(viii) Regional Directors.
(ix) Country Directors and those overseas staff members to whom contracting or procurement authority has been duly delegated by the Country Director.

§ 1201.735–402 Review of statements.

(a) The Office of General Counsel shall review all statements and forward the names of all listed organizations to the Director of Contracts and Grants Management. In addition, if the information provided in the statement indicates on its face a real, apparent, or potential conflict of interest under §§ 1201.735–301 through 1201.735–305 of these standards, the General Counsel will review the situation with the particular employee. If the General Counsel and the employee are unable to resolve the conflict to the General Counsel's satisfaction, or if the employee wishes to request an exception to any of the above enumerated rules, the case will be referred to the Committee on Conflict of Interests. The Committee is authorized to recommend appropriate remedial action to the Director, who is authorized to take such action as may include, but is not limited to, changing assigned duties, requiring the employee or special employee to divest himself of

a conflicting interest, taking disciplinary action, or disqualifying or accepting the self-disqualification of the employe or special employee for a particular assignment.

(b) The Office of Contracts and Grants Management shall maintain a list of all the organizations with which employees are or have been associated, as well as a list of all current grantees of and contractors with the Agency. When names of organizations with which new employees are or have been associated are submitted to the Grants office, they shall be checked against the list of current grantees or contractors. Similarly, before any new grants or contracts are awarded, the names of the potential grantees and contractors will be checked against the master list of organizations with which employees are or have been associated. Any real, apparent, or potential conflicts which come to light as a result of these cross checks will be referred to the Office of General Counsel for review. The General Counsel will proceed as in paragraph (a) of this section, referring the matter to the Committee on Conflict of Interests if necessary.

(c) Whenever an organization submits a proposal or application or otherwise indicates in writing its intent to apply for or seek a specific grant or contract, ACTION shall immediately forward a copy of the Agency standards of conduct to that organization and shall note which particular rules apply to potential grantees and contractors.

(d) Whenever a regular or special employee terminates his or her employment with ACTION, the Office of Personnel Management shall provide that employee with a copy of the rule which restricts a person's employment for a period of 1 year after leaving ACTION. Personnel shall also notify the Office of General Counsel when an employee terminates. One year after the date of termination, General Counsel will instruct the Office of Grants and Management to remove from the master list any organizations with which the terminated employee was associated. Three years after the date of termination, General Counsel will destroy the statement of employment and financial interests.

PART 1203—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Sec.

AUTHORITY: Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d–1.

SOURCE: 39 FR 27322, July 26, 1974, unless otherwise noted.

§ 1203.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as title VI), to the end that a person in the United States shall not, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under a program or activity receiving Federal financial assistance from ACTION.

§ 1203.2 Application of this part.

(a) This part applies to each program for which Federal financial assistance is authorized under a law administered by ACTION, including the federally assisted programs listed in appendix A to this part. It also applies to money paid, property transferred, or other Federal financial assistance extended under a program after the effective date of this part pursuant to an application approved before that effective date. This part does not apply to:

(1) Federal financial assistance by way of insurance or guaranty contracts;

(2) Money paid, property transferred, or other assistance extended under a program before the effective date of this part, except when the assistance was subject to the title VI regulations of an agency whose responsibilities are now exercised by ACTION;

(3) Assistance to any individual who is the ultimate beneficiary under a program; or

(4) Employment practices, under a program, of an employer, employment agency, or labor organization, except to the extent described in § 1203.4(c).

The fact that a program is not listed in Appendix A to this part does not mean, if title VI is otherwise applicable, that the program is not covered. Other programs under statutes now in force or hereinafter enacted may be added to Appendix A to this part.

(b) In a program receiving Federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, to the extent that rights to space on, over, or under that property are included as part of the program receiving that assistance, the nondiscrimination requirement of this part extends to a facility located wholly or in part in that space.

§ 1203.3 Definitions.

Unless the context requires otherwise, in this part:

(a) *Applicant* means a person who submits an application, request, or plan required to be approved by ACTION, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and ''application'' means that application, request, or plan.

(b) *Facility* includes all or any part of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration, or acquisition of facilities.

(c) *Federal financial assistance* includes:

(1) Grants and loans of Federal funds;

(2) The grant or donation of Federal property and interests in property;

(3) The detail of Federal personnel;

(4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in the property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by the sale or lease to the recipient; and

(5) A Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(d) *Primary recipient* means a recipient that is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(e) *Program* includes a program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training or other services whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities), or for the provision of facilities for furnishing services, financial aid, or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance are deemed to include a service, financial aid, or other benefits provided:

(1) With the aid of Federal financial assistance,

(2) With the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet the matching requirements or other conditions which must be met in order to receive the Federal financial assistance, or

(3) In or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(f) *Recipient* may mean any State, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual in any State, the District of Columbia,

the Commonwealth of Puerto Rico, or territory or possession of the United States, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but the term does not include any ultimate beneficiary under a program.

(g) *Director* means the Director of ACTION or any person to whom he has delegated his authority in the matter concerned.

§ 1203.4 Discrimination prohibited.

(a) *General.* A person in the United States shall not, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, a program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under a program to which this part applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin—

(i) Deny a person a service, financial aid, or other benefit provided under the program;

(ii) Provide a service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of a service, financial aid, or other benefit under the program;

(iv) Restrict a person in any way in the enjoyment of an advantage or privilege enjoyed by others receiving a service, financial aid, or other benefit under the program;

(v) Treat a person differently from others in determining whether he satisfies an admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided a service, financial aid, or other benefit provided under the program;

(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program; or

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under a program or the class of persons to whom, or the situations in which, the services, financial aid, other benefits, or facilities will be provided under a program, or the class of persons to be afforded an opportunity to participate in a program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

(3) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(4)(i) In administering a program regarding which the recipient had previously discriminated against persons on the ground of race, color, or national origin, the recipient shall take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of prior discrimination a recipient in administering a program may take affirmative action to overcome the effect of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

(c) *Employment practices.* (1) When a primary objective of a program of Federal financial assistance to which this part applies is to provide employment, a recipient or other party subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices

under the program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay, or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). A recipient shall take affirmative action to insure that applicants are employed, and employees are treated during employment, without regard to race, color, or national origin. The requirements applicable to construction employment under a program are those specified in or pursuant to part III of Executive Order 11246 or any Executive order which supersedes it.

(2) Federal financial assistance to programs under laws funded or administered by ACTION which have as a primary objective the providing of employment include those set forth in Appendix B to this part.

(3) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient tends, on the ground of race, color, or national origin, to exclude persons from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this part applies, the provisions of paragraph (c)(1) of this section apply to the employment practices of the recipient to the extent necessary to assure equality of opportunity to and nondiscriminatory treatment of beneficiaries.

(d) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program to which this part applies, on the ground of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of title VI of this part.

§ 1203.5 Assurances required.

(a) *General.* (1) An application for Federal financial assistance to carry out a program to which this part applies, except a program to which paragraph (d) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of Federal financial assistance pursuant to the application, contain or be accompanied by, assurances that the program will be conducted or the facility operated in compliance with the requirements imposed by or pursuant to this part. Every program of Federal financial assistance shall require the submission of these assurances. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurances shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In other cases, the assurances obligate the recipient for the period during which the Federal financial assistance is extended to the program. In the case where the assistance is sought for the construction of a facility or part of a facility, the assurances shall extend to the entire facility and to the facilities operated in connection therewith. ACTION shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. The assurances shall include provisions which give the United States the right to seek judicial enforcement.

(2) When Federal financial assistance is provided in the form of a transfer of real property, structures, or improvements thereon, or interest therein, from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose involving the provision of

similar services or benefits. When no transfer of property of interest therein from the Federal Government is involved, but property is acquired or improved under a program of Federal financial assistance, the recipient shall agree to include a covenant in any subsequent transfer of the property. When the property is obtained from the Federal Government, the covenant may also include a condition coupled with a right to be reserved by ACTION to revert title to the property in the event of a breach of the covenant where, in the discretion of ACTION, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In the event a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on property for the purposes for which the property was transferred, ACTION may agree, on request of the transferee and if necessary to accomplish the financing, and on conditions as he deems appropriate, to subordinate a right of reversion to the lien of a mortgage or other encumbrance.

(b) *Assurances from Government agencies.* In the case of an application from a department, agency, or office of a State or local government for Federal financial assistance for a specified purpose, the assurance required by this section shall extend to any other department, agency, or office of the same governmental unit if the policies of the other department, agency, or office will substantially affect the project for which Federal financial assistance is requested. That requirement may be waived by the responsible ACTION official if the applicant establishes, to the satisfaction of the responsible ACTION official, that the practices in other agencies or parts or programs of the governmental unit will in no way affect:

(1) Its practices in the program for which Federal financial assistance is sought, or

(2) The beneficiaries of or participants in or persons affected by the program, or

(3) Full compliance with this part as respects the program.

(c) *Assurance from academic and other institutions.* (1) In the case of an application for Federal financial assistance by an academic institution, the assurance required by this section extends to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required by an academic institution, detention or correctional facility, or any other institution or facility, relating to the institution's practices with respect to admission or other treatment of individuals as students, patients, wards, inmates, persons subject to control, or clients of the institution or facility or to the opportunity to participate in the provision of services, disposition, treatment, or benefits to these individuals, is applicable to the entire institution or facility unless the applicant establishes, to the satisfaction of the responsible ACTION official, that the practices in designated parts or programs of the institution or facility will in no way affect its practices in the program of the institution or facility for which Federal financial assistance is sought, or the beneficiaries of or participants in the program. If the assistance sought is for the construction of a facility or part of a facility, the assurance shall extend to the entire facility and to facilities operated in connection therewith.

(d) *Continuing State programs.* Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this part applies (including the programs listed in Appendix A to this part) shall as a condition to its approval and the extension of Federal financial assistance pursuant to the application:

(1) Contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with the requirements imposed by or pursuant to this part, and

(2) Provide or be accompanied by provision for methods of administration for the program as are found by ACTION to give reasonable guarantee that the applicant and all recipients of

Federal financial assistance under the program will comply with the requirements imposed by or pursuant to this part.

(Approved by the Office of Management and Budget under control number 3001–0016, paragraph (a)(1))

[39 FR 27322, July 26, 1974, as amended at 47 FR 3553, Jan. 26, 1982]

§1203.6 Compliance information.

(a) *Cooperation and assistance.* ACTION, to the fullest extent practicable, shall seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep records and submit to ACTION timely, complete, and accurate compliance reports at the times, and in the form and containing the information ACTION may determine necessary to enable it to ascertain whether the recipient has complied or is complying with this part. In the case of a program under which a primary recipient extends Federal financial assistance to other recipients, the other recipients shall also submit compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part. In general, recipients should have available for ACTION racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs.

(c) *Access to sources of information.* Each recipient shall permit access by ACTION during normal business hours to its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. When information required of a recipient is in the exclusive possession of an other agency, institution, or person and this agency, institution, or person fails or refuses to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons the information regarding the provisions of this part and its applicability to the program under which the recipient received Federal financial assistance, and make this information available to them in the manner, as ACTION finds necessary, to apprise the persons of the protections against discrimination assured them by title VI and this part.

§1203.7 Conduct of investigations.

(a) *Periodic compliance reviews.* ACTION may from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this part may by himself or by a representative file with ACTION a written complaint. A complaint shall be filed not later than 180 days after the date of the alleged discrimination, unless the time for filing is extended by ACTION.

(c) *Investigations.* ACTION will make a prompt investigation whenever a compliance review, report, complaint, or other information indicates a possible failure to comply with this part. The investigation will include, when appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, ACTION will so inform the recipient and the matter will be resolved by voluntary means whenever possible. If it has been determined that the matter cannot be resolved by voluntary means, action will be taken as provided for in §1203.8.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, ACTION will so inform, in writing, the recipient and the complainant, if any.

(e) *Intimidatory or retaliatory acts prohibited.* A recipient or other person shall not intimidate, threaten, coerce, or discriminate against an individual for the purpose of interfering with a right or privilege secured by section 601

of title VI of this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential, except to the extent necessary to carry out the purposes of this part, including the conduct of an investigation, hearing, or judicial proceeding arising thereunder.

§ 1203.8 Procedure for effecting compliance.

(a) *General.* (1) If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by other means authorized by law.

(2) Other means may include, but are not limited to: (i) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce the rights of the United States under a law of the United States (including other titles of the Civil Rights Act of 1964) or an assurance or other contractual undertaking, and

(ii) An applicable proceeding under State or local law.

(b) *Noncompliance with § 1203.5.* If an applicant fails or refuses to furnish an assurance required under § 1203.5 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. ACTION shall not be required to provide assistance in that case during the pendency of the administrative proceedings under this paragraph. Subject, however, to § 1203.12, ACTION shall continue assistance during the pendency of the proceedings where the assistance is due and payable pursuant to an application approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* An order suspending, terminating, or refusing to grant or to continue Federal financial assistance shall not become effective until—

(1) ACTION has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by informal voluntary means;

(2) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part;

(3) The action has been approved by the Director pursuant to § 1203.10(e); and

(4) The expiration of 30 days after the Director has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for the action.

An action to suspend or terminate or refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which the noncompliance has been so found.

(d) *Other means authorized by law.* An action to effect compliance with title VI by other means authorized by law shall not be taken by ACTION until—

(1) ACTION has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and

(3) The expiration of at least 10 days from the mailing of a notice to the recipient or person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take corrective action as may be appropriate.

§ 1203.9 Hearings.

(a) *Opportunity for hearing.* When an opportunity for a hearing is required by § 1203.8(c), reasonable notice shall be given by registered or certified mail,

return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(1) Fix a date not less than 20 days after the date of notice within which the applicant or recipient may request of ACTION that the matter be scheduled for hearing; or

(2) Advise the applicant or recipient that the matter in question has been set down for hearing at a stated time and place. The time and place so fixed shall be reasonable and subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set is deemed to be a waiver of the right to a hearing under section 602 of title VI and §1203.8(c) and consent to the making of a decision on the basis of the information available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of ACTION in Washington, DC, at a time fixed by ACTION unless it determines that the convenience of the applicant or recipient or of ACTION requires that another place be selected. Hearings shall be held before the Director, or at his discretion, before a hearing examiner appointed in accordance with section 3105 of title 5, United States Code, or detailed under section 3344 of title 5, United States Code.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and ACTION have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and an administrative review thereof shall be conducted in conformity with sections 554 through 557 of title 5, United States Code, and in accordance with the rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments, and briefs, requests for findings, and other related matters. Both ACTION and the applicant or recipient are entitled to introduce relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where determined reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. Documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. Decisions shall be based on the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under title VI, ACTION may, by agreement with the other departments or agencies, when applicable, provide for the conduct of consolidated or joint hearings, and for the application to these hearings of rules or procedures not inconsistent with this part. Final decisions in these cases, insofar as this regulation is concerned, shall be made in accordance with §1203.10.

§ 1203.10 Decisions and notices.

(a) *Procedure on decisions by hearing examiner.* If the hearing is held by a

hearing examiner, the hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Director for a final decision, and a copy of the initial decision or certification shall be mailed to the applicant or recipient. When the initial decision is made by the hearing examiner, the applicant or recipient may, within 30 days after the mailing of a notice of initial decision, file with the Director his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the Director may, on his own motion, within 45 days after the initial decision, serve on the applicant or recipient a notice that he will review the decision. On the filing of the exceptions or of notice of review, the Director shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision, subject to paragraph (e) of this section, shall constitute the final decision of the Director.

(b) *Decisions on record or review by the Director.* When a record is certified to the Director for decision or the Director reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or when the Director conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with it briefs or other written statements of the recipient's contentions, and a written copy of the final decision of the Director will be sent to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* When a hearing is waived pursuant to §1203.9, a decision shall be made by ACTION on the record and a written copy of the decision shall be sent to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing examiner or the Director shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by ACTION.* A final decision by an official of ACTION other than by the Director, which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or title VI, shall promptly be transmitted to the Director, who may approve the decision, vacate it, or remit or mitigate a sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain the terms, conditions, and other provisions as are consistent with and will effectuate the purposes of title VI and this part, including provisions designed to assure that Federal financial assistance will not thereafter be extended under the programs to the applicant or recipient determined by the decision to be in default in its performance of an assurance given by it under this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies ACTION that it will fully comply with this part.

(g) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of the order for eligibility, or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) An applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request ACTION to restore fully its eligibility to receive Federal financial assistance. A request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If ACTION determines that those requirements have been satisfied, it shall restore the eligibility.

(3) If ACTION denies a request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes ACTION is in error. The applicant or recipient shall be given an expeditious hearing, with a decision on the record in accordance with the rules or procedures issued by ACTION. The applicant or recipient shall be restored to eligibility if it proves at the hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section remain in effect.

§ 1203.11 Judicial review.

Action taken pursuant to section 602 of title VI is subject to judicial review as provided in section 603 of title VI.

§ 1203.12 Effect on other regulations, forms, and instructions.

(a) *Effect on other regulations.* Regulations, orders, or like directions issued before the effective date of this part by ACTION which impose requirements designed to prohibit discrimination against individuals on the ground of race, color, or national origin under a program to which this part applies, and which authorizes the suspension or termination of or refusal to grant or to continue Federal financial assistance to an applicant for or recipient of assistance under a program for failure to comply with the requirements, are superseded to the extent that discrimination is prohibited by this part, except that nothing in this part relieves a person of an obligation assumed or imposed under a superseded regulation, order, instruction, or like direction, before the effective date of this part. This part does not supersede any of the following (including future amendments thereof):

(1) Executive Order 11246 (3 CFR, 1965 Supp.) and regulations issued there under or

(2) Any other orders, regulations, or instructions, insofar as these orders, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in a program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* ACTION shall issue and promptly make available to all interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies, and for which it is responsible.

(c) *Supervision and coordination.* ACTION may from time to time assign to officials of ACTION, or to officials of other departments or agencies of the Government with the consent of the departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI and this part (other than responsibilities for final decision as provided in § 1203.10), including the achievement of effective coordination and maximum uniformity within ACTION and within the executive branch in the application of title VI and this part to similar programs and in similar situations. An action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though the action had been taken by ACTION.

APPENDIX A TO PART 1203—PROGRAMS TO WHICH THIS PART APPLIES

1. Grants for the development or operation of retired senior volunteer programs pursuant to section 601 of the Older Americans Act of 1965, as amended (42 U.S.C. 3044).

2. Grants for the development and operation of foster grandparents projects pursuant to section 611 of the Older Americans Act of 1965, as amended (42 U.S.C. 3044b).

APPENDIX B TO PART 1203—PROGRAMS TO WHICH THIS PART APPLIES WHEN A PRIMARY OBJECTIVE OF THE FEDERAL FINANCIAL ASSISTANCE IS TO PROVIDE EMPLOYMENT

1. Grants for the development or operation of retired senior volunteer programs pursuant to section 601 of the Older Americans Act of 1965, as amended (42 U.S.C. 3044).

2. Grants for the development and operation of foster grandparents projects pursuant to section 611 of the Older Americans Act of 1965, as amended (42 U.S.C. 3044b).

PART 1204—OFFICIAL SEAL

Sec.
1204.1 Authority.
1204.2 Description.
1204.3 Custody and authorization to affix.

AUTHORITY: Sec. 402, Pub. L. 93–113, 87 Stat. 407 (42 U.S.C. 5042).

SOURCE: 38 FR 34118, Dec. 11, 1973, unless otherwise noted.

§ 1204.1 Authority.

Pursuant to section 402(9) of Pub. L. 93–113, the ACTION official seal and design thereof which accompanies and is made part of this document, is hereby adopted and approved, and shall be judicially noticed.

[52 FR 20714, June 3, 1987]

§ 1204.2 Description.

The official seal of ACTION is described as follows:

(a) The words ''The Federal Domestic Volunteer Agency USA'' are in blue capital letters and form the outer circle of the seal.

(b) Within the circle of letters, on a field of white, appears the logotype word ''ACTION'' in blue, capital letters and in Italic type.

(c) The logotype word ''ACTION'' is split; ''ACT'' on a higher level and ''ION'' drops down to a slightly lower level.

(d) Two red bars, also split on two levels, underline the logotype word ''ACTION.''

The official seal of ACTION is modified when reproduced in black and white and when embossed, as it appears below.

[52 FR 20714, June 3, 1987]

§ 1204.3 Custody and authorization to affix.

(a) The seal is the official emblem of ACTION and its use is therefore permitted only as provided in this part.

(b) The seal shall be kept in the custody of the General Counsel, or any other person he authorizes, and should be affixed by him, the Director or the Deputy Director to all commissions of officials of ACTION, and used to authenticate records of ACTION and for other official purposes. The General Counsel may redelegate and authorize redelegations of, this authority.

(c) The Director shall designate and prescribe by internal written delegations and policies the use of the seal for other publication and display purposes and those ACTION officials authorized to affix the seal for these purposes.

(d) Use by any person or organization outside of the Agency may be made only with the Agency's prior written approval. Such request must be made in writing to the General Counsel.

PART 1206—GRANTS AND CONTRACTS—SUSPENSION AND TERMINATION AND DENIAL OF APPLICATION FOR REFUNDING

Subpart A—Suspension and Termination of Assistance

Sec.
1206.1–1 Purpose and scope.

Subpart B—Denial of Application for Refunding

AUTHORITY: 42 U.S.C. 4951 et R 1996, Jan. 16, 1974, unless otherwise noted.

Subpart A—Suspension and Termination of Assistance

§ 1206.1–1 Purpose and scope.

(a) This subpart establishes rules and review procedures for the suspension and termination of assistance provided by ACTION pursuant to various sections of titles I, II and III of the Domestic Volunteer Service Act of 1973, 87 Stat. 394, Pub. L. 93–113, (hereinafter the Act) because of a material failure of a recipient to comply with the terms and conditions of any grant or contract providing assistance under these sections of the Act, including applicable laws, regulations, issued program guidelines, instructions, grant conditions or approved work programs.

(b) However, this subpart shall not apply to any administrative action of the ACTION Agency based upon any violation, or alleged violation, of title VI of the Civil Rights Act of 1964 and sections 417 (a) and (b) of Pub. L. 93–113 relating to nondiscrimination. In the case of any such violation or alleged violation other provisions of this chapter shall apply.

§ 1206.1–2 Application of this part.

This subpart applies to programs authorized under titles I, II, and III of the Act.

§ 1206.1–3 Definitions.

As used in this subpart—

(a) The terms ''ACTION'' or ''ACTION Agency'' include each Regional Office.

(b) The term *Director* means the Director of the ACTION Agency.

(c) The term *responsible ACTION official* means the Director and Deputy Director of ACTION, appropriate Regional Director and any ACTION headquarters or regional office official who is authorized to make the grant of assistance in question. In addition to the foregoing officials, in the case of the suspension proceedings described in § 1206.1–4, the term ''responsible ACTION official'' shall also include a designee of an ACTION official who is authorized to make the grant of assistance in question.

(d) The term *assistance* means assistance under titles I, II and III of the Act in the form of grants or contracts involving Federal funds for the administration of which ACTION has primary responsibility.

(e) The term *recipient* means a public or private agency, institution or organization or a State or other political jurisdiction which has received assistance under title I, II, or III of the Act, but does not include individuals who ultimately receive benefits under any program of assistance or volunteers participating in any program.

(f) The term *agency* means a public or private agency, institution, or organization or a State or other political jurisdiction with which the recipient has entered into an arrangement, contract or agreement to assist in its carrying out of the development, conduct and administration of all or part of a project assisted under titles I, II and III.

(g) The term *party* in the case of a termination hearing means ACTION, the recipient concerned, and any other agency or organization which has a right or which has been granted permission by the presiding officer to participate in a hearing concerning termination of assistance to the recipient pursuant to § 1206.1–5(e).

(h) The term *termination* means any action permanently terminating or curtailing assistance to all or any part of a program prior to the time that

such assistance is concluded by the terms and conditions of the document in which such assistance is extended, but does not include the refusal to provide new or additional assistance.

(i) The term *suspension* means any action temporarily suspending or curtailing assistance in whole or in part, to all or any part of a program, prior to the time that such assistance is concluded by the terms and conditions of the document in which such assistance is extended, but does not include the refusal to provide new or additional assistance.

§ 1206.1–4 Suspension.

(a) *General.* The responsible ACTION official may suspend assistance to a recipient in whole or in part for a material failure or threatened material failure to comply with any requirement stated in § 1206.1–1. Such suspension shall be pursuant to notice and opportunity to show cause why assistance should not be suspended as provided in paragraph (b) of this section. However, in emergency cases, where the responsible ACTION official determines summary action is appropriate, the alternative summary procedure of paragraph (c) of this section shall be followed.

(b) *Suspension on notice.* (1) Except as provided in paragraph (c) of this section, the procedure for suspension shall be on notice of intent to suspend as hereinafter provided.

(2) The responsible ACTION official shall notify the recipient by letter or by telegram that ACTION intends to suspend assistance in whole or in part unless good cause is shown why assistance should not be suspended. In such letter or telegram the responsible ACTION official shall specify the grounds for the proposed suspension and the proposed effective date of the suspension.

(3) The responsible ACTION official shall also inform the recipient of its right to submit written material in opposition to the intended suspension and of its right to request an informal meeting at which the recipient may respond and attempt to show why such suspension should not occur. The period of time within which the recipient may submit such written material or request the informal meeting shall be established by the responsible ACTION official in the notice of intent to suspend. However, in no event shall the period of time within which the recipient must submit written material or request such a meeting be less than 5 days after the notice of intent to suspend assistance has been sent. If the recipient requests a meeting, the responsible ACTION official shall fix a time and place for the meeting, which shall not be less than 5 days after the recipient's request is received by ACTION.

(4) In lieu of the provisions of paragraph (b)(3) of this section dealing with the right of the recipient to request an informal meeting, the responsible ACTION official may on his own initiative establish a time and place for such a meeting and notify the recipient in writing or by telegram. However, in no event shall such a meeting be scheduled less than seven days after the notice of intent to suspend assistance is sent to the recipient.

(5) The responsible ACTION official may in his discretion extend the period of time or date referred to in the previous paragraphs of this section and shall notify the recipient in writing or by telegram of any such extension.

(6) At the time the responsible ACTION official sends the notification referred to in paragraphs (b) (2), (3), and (4) of this section to the recipient, he shall also send a copy of it to any agency whose activities or failures to act have substantially contributed to the proposed suspension, and shall inform such agency that it is entitled to submit written material or to participate in the informal meeting referred to in paragraphs (b) (3) and (4) of this section. In addition the responsible ACTION official may in his discretion give such notice to any other agency.

(7) Within 3 days of receipt of the notice referred to in paragraphs (b) (2), (3), and (4) of this section, the recipient shall send a copy of such notice and a copy of these regulations to all agencies which would be financially affected by the proposed suspension action. Any agency that wishes to submit written material may do so within the time stated in the notice. Any agency

that wishes to participate in the informal meeting with the responsible ACTION official contemplated herein may request permission to do so from the responsible ACTION official, who may in his discretion grant or deny such permission. In acting upon any such request from an agency, the responsible ACTION official shall take into account the effect of the proposed suspension on the particular agency, the extent to which the meeting would become unduly complicated as a result of granting such permission, and the extent to which the interests of the agency requesting such permission appear to be adequately represented by other participants.

(8) In the notice of intent to suspend assistance the responsible ACTION official shall invite voluntary action to adequately correct the deficiency which led to the initiation of the suspension proceeding.

(9) The responsible ACTION official shall consider any timely material presented to him in writing, any material presented to him during the course of the informal meeting provided for in paragraphs (b) (3) and (4) of this section as well as any showing that the recipient has adequately corrected the deficiency which led to the initiation of suspension proceedings. If after considering the material presented to him the responsible ACTION official concludes the recipient has failed to show cause why assistance should not be suspended, he may suspend assistance in whole or in part and under such terms and conditions as he shall specify.

(10) Notice of such suspension shall be promptly transmitted to the recipient and shall become effective upon delivery. Suspension shall not exceed 30 days unless during such period of time termination proceedings are initiated in accordance with § 1206.1–5, or unless the responsible ACTION official and the recipient agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension of assistance shall remain in full force and effect until such proceedings have been fully concluded.

(11) During a period of suspension no new expenditures shall be made and no new obligations shall be incurred in connection with the suspended program except as specifically authorized in writing by the responsible ACTION official. Expenditures to fulfill legally enforceable commitments made prior to the notice of suspension, in good faith and in accordance with the recipient's approved work program, and not in anticipation of suspension or termination, shall not be considered new expenditures. However, funds shall not be recognized as committed solely because the recipient has obligated them by contract or otherwise to an agency.

NOTE: Willful misapplication of funds may violate Federal criminal statutes.

(12) The responsible ACTION official may in his discretion modify the terms, conditions and nature of the suspension or rescind the suspension action at any time on his own initiative or upon a showing satisfactory to him that the recipient had adequately corrected the deficiency which led to the suspension and that repetition is not threatened. Suspensions partly or fully rescinded may, in the discretion of the responsible ACTION official be reimposed with or without further proceedings: *Provided however,* That the total time of suspension may not exceed 30 days unless termination proceedings are initiated in accordance with § 1206.1–5 or unless the responsible ACTION official and the recipient agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension of assistance shall remain in full force and effect until such proceedings have been fully concluded.

(c) *Summary suspension.* (1) The responsible ACTION official may suspend assistance without the prior notice and opportunity to show cause provided in paragraph (b) of this section if he determines in his discretion that immediate suspension is necessary because of a serious risk of: (i) Substantial injury to or loss of project funds or property, or

(ii) Violation of a Federal, State or local criminal statute, or

(iii) Violation of section 403 of Pub. L. 93–113 or of ACTION rules, regulations, guidelines and instructions, published in accordance with section 420 of

Pub. L. 93–113, implementing this section of the Act, and that such risk is sufficiently serious to outweigh the general policy in favor of advance notice and opportunity to show cause.

(2) Notice of summary suspension shall be given to the recipient by letter or by telegram, shall become effective upon delivery to the recipient, and shall specifically advise the recipient of the effective date of the suspension and the extent, terms, and condition of any partial suspension. The notice shall also forbid the recipient to make any new expenditures or incur any new obligations in connection with the suspended portion of the program. Expenditures to fulfill legally enforceable commitments made prior to the notice of suspension, in good faith and in accordance with the recipient's approved work program, and not in anticipation of suspension or termination, shall not be considered new expenditures. However, funds shall not be recognized as committed by a recipient solely because the recipient obligated them by contract or otherwise to an agency. (See note under paragraph (b)(11) of this section.)

(3) In the notice of summary suspension the responsible ACTION official shall advise the recipient that it may request ACTION to provide it with an opportunity to show cause why the summary suspension should be rescinded. If the recipient requests such an opportunity, the responsible ACTION official shall immediately inform the recipient in writing of the specific grounds for the suspension and shall within 7 days after receiving such request from the recipient hold an informal meeting at which the recipient may show cause why the summary suspension should be rescinded. Notwithstanding the provisions of this paragraph, the responsible ACTION official may proceed to initiate termination proceedings at any time even though assistance to the recipient has been suspended in whole or in part. In the event that termination proceedings are initiated, the responsible ACTION official shall nevertheless afford the recipient, if it so requests, an opportunity to show cause why suspension should be rescinded pending the outcome of the termination proceedings.

(4) Copies of the notice of summary suspension shall be furnished by the recipient to agencies in the same manner as notices of intent to suspend as set forth in paragraphs (b) (6), (7), and (8) of this section. Agencies may submit written material to the responsible ACTION official or to participate in the informal meeting as in the case of intended suspension proceedings set forth in paragraphs (b) (6) and (7) of this section.

(5) The effective period of a summary suspension of assistance may not exceed 30 days unless termination proceedings are initiated in accordance with § 1206.1–5, or unless the parties agree to a continuation of summary suspension for an additional period of time, or unless the recipient, in accordance with paragraph (c)(3) of this section, requests an opportunity to show cause why the summary suspension should be rescinded.

(6) If the recipient requests an opportunity to show cause why a summary suspension action should be rescinded the suspension of assistance shall continue in effect until the recipient has been afforded such opportunity and a decision has been made. Such a decision shall be made within 5 days after the conclusion of the informal meeting referred to in paragraph (c)(3) of this section. If the responsible ACTION official concludes, after considering all material submitted to him, that the recipient has failed to show cause why the suspension should be rescinded, the responsible ACTION official may continue the suspension in effect for an additional 7 days: *Provided however,* That if termination proceedings are initiated, the summary suspension of assistance shall remain in full force and effect until all termination proceedings have been fully concluded.

§ 1206.1–5 Termination.

(a) If the responsible ACTION official believes that an alleged failure to comply with any requirement stated in § 1206.1–1 may be sufficiently serious to warrant termination of assistance, whether or not assistance has been suspended, he shall so notify the recipient by letter or telegram. The notice shall state that there appear to be grounds

which warrant terminating the assistance and shall set forth the specific reasons therefor. If the reasons result in whole or substantial part from the activities of an agency other than the grantee, the notice shall identify that agency. The notice shall also advise the recipient that the matter has been set down for hearing at a stated time and place, in accordance with § 1206.1–6. In the alternative the notice shall advise the recipient of its right to request a hearing and shall fix a period of time which shall not be less than 10 days in which the recipient may request such a hearing.

(b) Termination hearings shall be conducted in accordance with the provision of §§ 1206.1–7 and 1206.1–8. They shall be scheduled for the earliest practicable date, but not later than 30 days after a recipient has requested such a hearing in writing or by telegram. Consideration shall be given to a request by a recipient to advance or postpone the date of a hearing scheduled by ACTION. Any such hearing shall afford the recipient a full and fair opportunity to demonstrate that it is in compliance with requirements specified in § 1206.1–1. In any termination hearing, ACTION shall have the burden of justifying the proposed termination action. However, if the basis of the proposed termination is the failure of a recipient to take action required by law, regulation, or other requirement specified in § 1206.1–1, the recipient shall have the burden of proving that such action was timely taken.

(c) If a recipient requests ACTION to hold a hearing in accordance with paragraph (a) of this section, it shall send a copy of its request for such a hearing to all agencies which would be financially affected by the termination of assistance and to each agency identified in the notice pursuant to paragraph (a) of this section. This material shall be sent to these agencies at the same time the recipient's request is made to ACTION. The recipient shall promptly send ACTION a list of the agencies to which it has sent such material and the date on which it was sent.

(d) If the responsible ACTION official pursuant to paragraph (a) of this section informs a recipient that a proposed termination action has been set for hearing, the recipient shall within 5 days of its receipt of this notice send a copy of it to all agencies which would be financially affected by the termination and to each agency identified in the notice pursuant to paragraph (a) of this section. The recipient shall send the responsible ACTION official a list of all agencies notified and the date of notification.

(e) If the responsible ACTION official has initiated termination proceedings because of the activities of an agency, that agency may participate in the hearing as a matter of right. Any other agency, person, or organization that wishes to participate in the hearing may, in accordance with § 1206.1–7(d), request permission to do so from the presiding officer of the hearing. Such participation shall not, without the consent of ACTION and the recipient, alter the time limitations for the delivery of papers or other procedures set forth in this section.

(f) The results of the proceeding and any measure taken thereafter by ACTION pursuant to this part shall be fully binding upon the recipient and all agencies whether or not they actually participated in the hearing.

(g) A recipient may waive a hearing by notice to the responsible ACTION official in writing and submit written information and argument for the record. Such material shall be submitted to the responsible ACTION official within a reasonable period of time to be fixed by him upon the request of the recipient. The failure of a recipient to request a hearing, or to appear at a hearing for which a date has been set, unless excused for good cause, shall be deemed a waiver of the right to a hearing and consent to the making of a decision on the basis of such information as is then in the possession of ACTION.

(h) The responsible ACTION official may attempt, either personally or through a representative, to resolve the issues in dispute by informal means prior to the date of any applicable hearing.

§ 1206.1–6 Time and place of termination hearings.

The termination hearing shall be held in Washington, DC, or in the appropriate Regional Office, at a time and place fixed by the responsible ACTION official unless he determines that the convenience of ACTION, or of the parties or their representatives, requires that another place be selected.

§ 1206.1–7 Termination hearing procedures.

(a) *General.* The termination hearing, decision, and any review thereof shall be conducted in accordance with the rules of procedure set forth in this section and §§ 1206.1–8 and 1206.1–9.

(b) *Presiding officer.* (1) The presiding officer at the hearing shall be the responsible ACTION official or, at the discretion of the responsible ACTION official, an independent hearing examiner designated as promptly as possible in accordance with section 3105 of title 5 of the United States Code. The presiding officer shall conduct a full and fair hearing, avoid delay, maintain order, and make a sufficient record for a full and true disclosure of the facts and issues. To accomplish these ends, the presiding officer shall have all powers authorized by law, and he may make all procedural and evidentiary rulings necessary for the conduct of the hearing. The hearing shall be open to the public unless the presiding officer for good cause shown shall otherwise determine.

(2) After the notice described in paragraph (f) of this section is filed with the presiding officer, he shall not consult any person or party on a fact in issue unless on written notice and opportunity for all parties to participate. However, in performing his functions under this part the presiding officer may use the assistance and advice of an attorney designated by the General Counsel of ACTION or the appropriate Regional Counsel: *Provided,* That the attorney designated to assist him has not represented ACTION or any other party or otherwise participated in a proceeding, recommendation, or decision in the particular matter.

(c) *Presentation of evidence.* Both ACTION and the recipient are entitled to present their case by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination as may be required for a full and true disclosure of all facts bearing on the issues. The issues shall be those stated in the notice required to be filed by paragraph (f) of this section, those stipulated in a prehearing conference or those agreed to by the parties.

(d) *Participation.* (1) In addition to ACTION, the recipient, and any agency which has a right to appear, the presiding officer in his discretion may permit the participation in the proceedings of such persons or organizations as he deems necessary for a proper determination of the issues involved. Such participation may be limited to those issues or activities which the presiding officer believes will meet the needs of the proceeding, and may be limited to the filing of written material.

(2) Any person or organization that wishes to participate in a proceeding may apply for permission to do so from the presiding officer. This application, which shall be made as soon as possible after the notice of suspension or proposed termination has been received by the recipient, shall state the applicant's interest in the proceeding, the evidence or arguments the applicant intends to contribute, and the necessity for the introduction of such evidence or arguments.

(3) The presiding officer shall permit or deny such participation and shall give notice of his decision to the applicant, the recipient, and ACTION, and, in the case of denial, a brief statement of the reasons therefor: *Provided however,* That the presiding officer may subsequently permit such participation if, in his opinion, it is warranted by subsequent circumstances. If participation is granted, the presiding officer shall notify all parties of that fact and may, in appropriate cases, include in the notification a brief statement of the issues as to which participation is permitted.

(4) Permission to participate to any extent is not a recognition that the participant has any interest which may be adversely affected or that the participant may be aggrieved by any decision, but is allowed solely for the aid

and information of the presiding officer.

(e) *Filing.* All papers and documents which are required to be filed shall be filed with the presiding officer. Prior to filing, copies shall be sent to the other parties.

(f) *Notice.* The responsible ACTION official shall send the recipient and any other party a written notice which states the time, place, nature of the hearing, the legal authority and jurisdiction under which the hearing is to be held. The notice shall also identify with reasonable specificity the facts relied on as justifying termination and the ACTION requirements which it is contended the recipient has violated. The notice shall be filed and served not later than 10 days prior to the hearing and a copy thereof shall be filed with the presiding officer.

(g) *Notice of intention to appear.* The recipient and any other party which has a right or has been granted permission to participate in the hearing shall give written confirmation to ACTION of its intention to appear at the hearing 3 days before it is scheduled to occur. Failing to do so may, at the discretion of the presiding officer, be deemed a waiver of the right to a hearing.

(h) *Form and date of service.* All papers and documents filed or sent to party shall be signed in ink by the appropriate party or his authorized representative. The date on which papers are filed shall be the day on which the papers or documents are deposited, postage prepaid in the U.S. mail, or are delivered in person: *Provided however,* That the effective date of the notice that there appear to be grounds which warrant terminating assistance shall be the date of its delivery or attempted delivery at the recipient's last known address as reflected in the records of ACTION.

(i) *Prehearing conferences.* Prior to the commencement of a hearing the presiding officer may, subject to the provisions of paragraph (b)(2) of this section, require the parties to meet with him or correspond with him concerning the settlement of any matter which will expedite a quick and fair conclusion of the hearing.

(j) *Evidence.* Technical rules of evidence shall not apply to hearings conducted pursuant to this subpart, but the presiding officer shall apply rules or principles designed to assure production of relevant evidence and to subject testimony to such examination and crossexamination as may be required for a full and true disclosure of the facts. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. A transcription shall be made of the oral evidence and shall be made available to any participant upon payment of the prescribed costs. All documents and other evidence submitted shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues.

(k) *Depositions.* If the presiding officer determines that the interests of justice would be served, he may authorize the taking of depositions provided that all parties are afforded an opportunity to participate in the taking of the depositions. The party who requested the deposition shall arrange for a transcript to be made of the proceedings and shall upon request, and at his expense, furnish all other parties with copies of the transcript.

(l) *Official notice.* Official notice may be taken of a public document, or part thereof, such as a statute, official report, decision, opinion or published scientific date issued by any agency of the Federal Government or a State or local government and such document or data may be entered on the record without further proof of authenticity. Official notice may also be taken of such matters as may be judicially noticed in the courts of the United States, or any other matter of established fact within the general knowledge of ACTION. If the decision of the presiding officer rests on official notice of a material fact not appearing in evidence, a party shall on timely request be afforded an opportunity to show the contrary.

(m) *Proposed findings and conclusions.* After the hearing has concluded, but before the presiding officer makes his

decision, he shall afford each participant a reasonable opportunity to submit proposed findings of fact and conclusions. After considering each proposed finding or conclusion the presiding officer shall state in his decision whether he has accepted or rejected them in accordance with the provisions of § 1206.1–8(a).

§ 1206.1–8 Decisions and notices regarding termination.

(a) Each decision of a presiding officer shall set forth his findings of fact, and conclusions, and shall state whether he has accepted or rejected each proposed finding of fact and conclusion submitted by the parties, pursuant to § 1206.1–7(m). Findings of fact shall be based only upon evidence submitted to the presiding officer and matters of which official notice has been taken. The decision shall also specify the requirement or requirements with which it is found that the recipient has failed to comply.

(b) The decision of the presiding officer may provide for continued suspension or termination of assistance to the recipient in whole or in part, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act.

(c) If the hearing is held by an independent hearing examiner rather than by the responsible ACTION official, he shall make an initial decision, and a copy of this initial decision shall be mailed to all parties. Any party may, within 20 days of the mailing of such initial decision, or such longer period of time as the presiding officer specifies, file with the responsible ACTION official his written exceptions to the initial decision and any supporting brief or statement. Upon the filing of such exceptions, the responsible ACTION official shall, within 20 days of the mailing of the exceptions, review the initial decision and issue his own written decision thereof, including the reasons therefore. The decision of the responsible ACTION official may increase, modify, approve, vacate, remit, or mitigate any sanction imposed in the initial decision or may remand the matter to the presiding officer for further hearing or consideration.

(d) Whenever a hearing is waived, a decision shall be made by the responsible ACTION official and a written copy of the final decision of the responsible ACTION official shall be given to the recipient.

(e) The recipient may request the Director to review a final decision by the responsible ACTION official which provides for the termination of assistance. Such a request must be made in writing within 15 days after the recipient has been notified of the decision in question and must state in detail the reasons for seeking the review. In the event the recipient requests such a review, the Director or his designee shall consider the reasons stated by the recipient for seeking the review and shall approve, modify, vacate or mitigate any sanction imposed by the responsible ACTION official or remand the matter to the responsible ACTION official for further hearing or consideration. The decision of the responsible ACTION official will be given great weight by the Director or his designee during the review. During the course of his review the Director or his designee may, but is not required to, hold a hearing or allow the filing of briefs and arguments. Pending the decision of the Direct or his designee assistance shall remain suspended under the terms and conditions specified by the responsible ACTION official, unless the responsible ACTION official or the Director or his designee otherwise determines. Every reasonable effort shall be made to complete the review by the Director or his designee within 30 days of receipt by the Director of the recipient's request. The Director or his designee may however extend this period of time if he determines that additional time is necessary for an adequate review.

§ 1206.1–9 Right to counsel; travel expenses.

In all proceedings under this subpart, whether formal or informal, the recipient and ACTION shall have the right to be represented by counsel or other authorized representatives. If the recipient and any agency which has a right to participate in an informal meeting pursuant to § 1206.1–4 or a termination hearing pursuant to § 1206.1–7 do not

have an attorney acting in that capacity as a regular member of the staff of the organization or a retainer arrangement with an attorney, the Boards of Directors of such recipient and agency will be authorized to designate an attorney to represent their organizations at any such show cause proceeding or termination hearing and to transfer sufficient funds from the Federal grant monies they have received for the project to pay the fees, travel, and per diem expenses of such attorney. The fees for such attorney shall be the reasonable and customary fees for an attorney practicing in the locality of the attorney. However, such fees shall not exceed $100 per day without the prior express written approval of ACTION. Travel and per diem expenses may be paid to such attorney only in accordance with the policies set forth in the Standard Government Travel Regulations and in §§ 1206.3–1 and 1206.3–6 of this chapter. The Boards of Directors of the recipient or any agency which has a right to participate in an informal meeting pursuant to § 1206.1–4 or a termination hearing pursuant to § 1206.1–7 will also be authorized to designate two persons in addition to an attorney whose travel and per diem expenses to attend the meeting or hearing may be paid from Federal grant or contract monies. Such travel and per diem expenses shall conform to the policies set forth in the Standard Government Travel Regulations and in §§ 1206.3–1 and 1206.3–6 of this chapter.

§ 1206.1–10 Modification of procedures by consent.

The responsible ACTION official or the presiding officer of a termination hearing may alter, eliminate or modify any of the provisions of this subpart with the consent of the recipient and, in the case of a termination hearing, with the consent of all agencies that have a right to participate in the hearing pursuant to § 1206.1–5(e). Such consent must be in writing or be recorded in the hearing transcript.

§ 1206.1–11 Other remedies.

The procedures established by this subpart shall not preclude ACTION from pursuing any other remedies authorized by law.

Subpart B—Denial of Application for Refunding

SOURCE: 47 FR 5719, Feb. 8, 1982, unless otherwise noted.

§ 1206.2–1 Applicability of this subpart.

This subpart applies to grantees and contractors receiving financial assistance and to sponsors who receive volunteers under the Domestic Volunteer Service Act of 1973, as amended, 42 U.S.C. 4951 *et seq.* The procedures in this subpart do not apply to review of applications for the following:

(a) University Year for ACTION projects which have received federal funds for five years;

(b) Mini-grants;

(c) Other projects for which specific time limits with respect to federal assistance are established in the original notice of grant award or other document providing assistance, where the specified time limit has been reached; and

(d) VISTA project extensions of less than six months.

§ 1206.2–2 Purpose.

This subpart establishes rules and review procedures for the denial of a current recipient's application for refunding.

§ 1206.2–3 Definitions.

As used in this subpart—''ACTION,'' ''Director,'' and ''recipient'' shall be defined in accordance with § 1206.1–3.

Financial assistance and *assistance* include the services of volunteers supported in whole or in part with ACTION funds.

Program account means assistance provided by ACTION to support a particular program activity; for example, VISTA, Foster Grandparent Program, Senior Companion Program and Retired Senior Volunteer Program.

Refunding includes renewal of an application for the assignment of volunteers.

§ 1206.2–4 Procedures.

(a) The procedures set forth in paragraphs (b) through (g) of this section shall apply only where an application for refunding submitted by a current recipient is rejected or is reduced to 80

percent or less of the applied-for level of funding or the recipient's current level of operations, whichever is less. It is further a condition for application of these procedures that the rejection or reduction be based on circumstances related to the particular grant or contract. These procedures do not apply to reductions based on legislative requirements, or on general policy or in instances where, regardless of a recipient's current level of operations, its application for refunding is not reduced by 20 percent or more. The fact that the basis for rejecting an application may also be a basis for termination under subpart A of this part shall not prevent the use of this subpart to the exclusion of the procedures in subpart A.

(b) Before rejecting an application of a recipient for refunding ACTION shall notify the recipient of its intention, in writing, at least 75 days before the end of the recipient's current program year or grant budget period. The notice shall inform the recipient that a tentative decision has been made to reject or reduce an application for refunding. The notice shall state the reasons for the tentative decision to which the recipient shall address itself if it wishes to make a presentation as described in paragraphs (c) and (d) of this section.

(c) If the notice of tentative decision is based on any reasons, other than those described in paragraph (d) of this section, including, but not limited to, situations in which the recipient has ineffectively managed Agency resources or substantially failed to comply with agency policy and overall objectives under a contract or grant agreement with the Agency, the recipient shall be informed in the notice, of the opportunity to submit written material and to meet informally with an ACTION official to show cause why its application for refunding should not be rejected or reduced. If the recipient requests an informal meeting, such meeting shall be held on a date specified by ACTION. However, the meeting may not, without the consent of the recipient, be scheduled sooner than 14 days, nor more than 30 days, after ACTION has mailed the notice to the recipient. If the recipient requests an informal meeting, the meeting shall be scheduled by ACTION as soon as possible after receipt of the request. The official who shall conduct this meeting shall be an ACTION official who is authorized to finally approve or make the grant of assistance in question, or his designee.

(d) If the notice of tentative decision is based upon a specific charge of failure to comply with the terms and conditions of the grant or contract, alleging wrongdoing on the part of the recipient, the notice shall offer the recipient an opportunity for an informal hearing before a mutually agreed-upon impartial hearing officer. The authority of such hearing officer shall be limited to conducting the hearing and offering recommendations. ACTION will retain all authority to make the final determination as to whether the application should be finally rejected or reduced. If the recipient requests an informal hearing, such hearing shall be held at a date specified by ACTION. However, such hearing may not, without the consent of the recipient, be scheduled sooner than 14 days nor more than 30 days after ACTION has mailed the notice to the recipient.

(e) In the selection of a hearing official and the location of either an informal meeting or hearing, the Agency, while mindful of considerations of the recipient, will take care to insure that costs are kept to a minimum. The informal meeting or hearing shall be held in the city or county in which the recipient is located, in the appropriate Regional Office, or another appropriate location. Within the limits stated in the preceding sentence, the decision as to where the meeting shall be held will be made by ACTION, after weighing the convenience factors of the recipient. For the convenience of the recipient, ACTION will pay the reasonable travel expenses for up to two representatives of the recipient, if requested.

(f) The recipient shall be informed of the final Agency decision on refunding and the basis for the decision by the deciding official.

(g) If the recipient's budget period expires prior to the final decision by the deciding official, the recipient's authority to continue program operations shall be extended until such decision is

made and communicated to the recipient. If a volunteer's term of service expires after receipt by a sponsor of a tentative decision not to refund a project, the period of service of the volunteer may be similarly extended. No volunteers may be reenrolled for a full 12-month term, or new volunteers enrolled for a period of service while a tentative decision not to refund is pending. If program operations are so extended, ACTION and the recipient shall provide, subject to the availability of funds, operating funds at the same levels as in the previous budget period to continue program operations.

[50 FR 42025, Oct. 17, 1985]

§ 1206.2–5 Right to counsel.

In all proceedings under this subpart, whether formal or informal, the recipient and ACTION shall have the right to be represented by counsel or other authorized representatives, at their own expense.

PART 1207—SENIOR COMPANION PROGRAM

Subpart A—General

Subpart B—Project Development and Funding

Subpart C—Project Operations

Subpart D—Non-ACTION Funded Projects

Subpart E—Sanctions and Legal Representation

AUTHORITY: Secs. 211(d), (e); 212, 213, 221, 222, 223, 402(14) and 420 of Pub. L. 93–113, 87 Stat. 402, 403, 404, 407 and 414, sec. 213 of Pub. L. 97–35, 97 Stat. 487, 42 U.S.C. 5011 (b), (d) and (e); 5012, 5021, 5022, 5023, 5042(14), 5060 and 5013.

SOURCE: 48 FR 26803, June 10, 1983, unless otherwise noted.

Subpart A—General

§ 1207.1–1 Purpose of the program.

The Senior Companion Program (SCP) is authorized under title II, part C, of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113). The dual purpose of the program is to create part-time stipended volunteer community service opportunities for low-income persons aged 60 and over, and to provide supportive person-to-person services to assist adults having exceptional needs, developmental disabilities or other special needs for companionship.

§ 1207.1–2 Definitions.

Terms used in this part are defined as follows:

Act is the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113, 87 Stat. 394, 42 U.S.C. 4951).

Adult is any person aged 21 or over.

Advisory Council is a group of persons formally organized by the project sponsor for the purpose of advising and supporting the sponsor in operating the project effectively.

Agency is the federal ACTION agency.

Allowable medical expenses are annual out-of-pocket expenses for health insurance premiums, health care services, and medications provided to the applicant, enrollee, or spouse and were not and will not be paid for by Medicare, Medicaid, other insurance, or by any other third party and, shall not exceed 15 percent of the applicable ACTION income guideline.

Annual income is counted for the past 12 months and includes: The applicant or enrollee's income and, the applicant or enrollee's spouse's income, if the spouse lives in the same residence. Project directors may count the value

of shelter, food, and clothing, if provided at no cost by persons related to the applicant, enrollee, or spouse.

Direct Benefits are stipends, meals, transportation, annual physical examinations, volunteer insurance, recognition and uniforms included in the budget as *Volunteer Expenses.*

Director is the Director of ACTION.

Exceptional Needs are one or more physical, emotional, or mental health limitation(s).

Federally recognized Indian tribal government means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of Interior as eligible for the special programs and services provided through the Bureau of Indian Affairs.

Handbook is the SCP Handbook No. 4405.91, which contains policies for implementing these regulations.

Handicapped is a person or persons having physical or mental impairments that substantially limit one or more major life activities.

Hard-to-reach individuals are those who are physically or socially isolated because of factors such as language, disability, or inadequate transportation.

Letter of Agreement is a written agreement between a volunteer station, the project sponsor and the adult served or the person legally responsible for the adult. It authorizes the assignment of a Senior Companion in the client's home, defines Senior Companion activities and delineates the specific arrangements for supervision.

Memorandum of Understanding is a written statement prepared and signed by the Senior Companion sponsor and the volunteer station which identifies project requirements, working relationships and mutal responsibilities.

OAVP refers to the Older American Volunteer Programs, which include: The Senior Companion Program, the Foster Grandparent Program, and the Retired Senior Volunteer Program.

Project is the locally planned and implemented Senior Companion Program activity as agreed upon between ACTION and the sponsor.

Service Area is a geographically defined area in which Senior Companions are recruited, enrolled, and placed on assignments.

Service Schedule is the 20 hours per week that a Senior Companion serves.

Sponsor is a public agency or private nonprofit organization which is responsible for the operation of the Senior Companion project.

Stipend is a payment to Senior Companions to enable them to serve without cost to themselves.

United States and States means the several states, the District of Columbia, the Virgin Islands, Puerto Rico, Guam, American Samoa and the Trust Territory of the Pacific Islands.

Volunteer Station is a public agency, private nonprofit organization or proprietary health care agency or organization that accepts the responsibility for assignment and supervision of Senior Companions. Each volunteer station must be licensed or otherwise certified, when required, by the appropriate state or local government. Private homes are not volunteer stations.

[48 FR 26803, June 10, 1983, as amended at 59 FR 15122, Mar. 31, 1994]

§ 1207.1–3 Coordination.

The sponsor shall coordinate activities with project-related groups and individuals, including those representing government, industry, labor, volunteer organizations, programs for the aging, including State and Area Agencies on Aging, and other ACTION programs, to facilitate cooperation with existing or planned community services and to develop community support.

Subpart B—Project Development and Funding

§ 1207.2–1 Inquiries.

Inquiries regarding the Senior Companion Program application process, program criteria, or the availability of funds, should be directed to the ACTION State Office serving the inquirer's own state. ACTION headquarters office in Washington, DC will assist in directing inquiries to the appropriate State office.

§ 1207.2–2 Local support.

An ACTION grant may be awarded to fund up to 90% of the cost of development and operation of a Senior Companion project. The sponsor is required to contribute at least 10% of the total project cost. Stipend payments in excess of the amount established by ACTION may not be included as part of the local support commitment. In exceptional circumstances the Director may approve assistance for more than 90% of the total project costs if:

(a) The project is located in an area where local resources are too limited to provide 10%; or

(b) A test project is determined to be of exceptional value, sufficient to warrant Federal support in excess of 90% of the total project cost.

§ 1207.2–3 Sponsor eligibility and solicitation of proposals.

(a) *Sponsor eligibility*. ACTION will award grants only to public agencies and private non-profit organizations in the United States which have the authority to accept and the capability to administer such grants.

(b) *Solicitation of proposals.* Any eligible organization may file an application for a grant. Applicants may also be solicited by ACTION pursuant to its objective of achieving equitable program resource distribution. Solicited applications are not assured of selection or approval and may have to compete with other solicited or unsolicited applications.

[48 FR 26803, June 10, 1983; 48 FR 44797, Sept. 30, 1983]

§ 1207.2–4 Project proposals.

(a) Applicants shall use standard forms prescribed by ACTION. ACTION State Offices will provide applicants with guidance and any additional instruction necessary to plan and budget proposed program activities.

(b) Agencies and organizations submitting grant applications must comply with provisions of Executive Order 12372, the ''Intergovernmental Review of Federal Programs and Activities,'' as set forth in 45 Code of Federal Regulations (CFR) part 1233.

(c) A potential sponsor must submit one copy of an application for a new SCP project to the State Agency on Aging, which has 45 days to review the application and make recommendations. The State Agency on Aging shall state in writing to ACTION its recommendations and reasons within this time period or will be considered to have waived its rights under this part.

§ 1207.2–5 Reveiw of project proposals.

(a) The ACTION State Office for the applicant's state will review the grant application to ensure that program requirements are complied with and that required documentation has been attached.

(b) If not approved, the application will be returned to the applicant with explanation of ACTION's decision. The unsuccessful applicant may reapply when the inadequacy, if any, found in the application is resolved.

§ 1207.2–6 Awards.

(a) ACTION will, within funds available, award a grant in writing to those applicants whose grant proposals provide the best potential for serving the purpose of the program. The award will be documented by Notice of Grant Award (NGA).

(b) The parties to the NGA are ACTION and the sponsoring organization. The NGA will document the sponsor's commitment to fulfill specific programmatic objectives and financial obligations. It will document the extent of ACTION's obligation to provide financial support to the sponsor.

(c) A sponsor may receive a grant award for more than one OAVP project.

§ 1207.2–7 Grant management.

(a) Sponsors shall manage grants awarded to them in accordance with these regulations, ACTION Handbook 2650.2, entitled *Grants Management Handbook for Grantees*, and SCP Handbook No. 4405.91. A copy of each document will be furnished the sponsor at the time the initial grant is awarded.

(b) Project support provided under an ACTION grant shall be furnished at the lowest possible cost consistent with the effective operation of the project.

(c) Project costs for which ACTION funds are budgeted must be justified as being essential to project operation.

§ 1207.2–8 Suspension, termination and denial of refunding.

Grant suspension, termination and denial of refunding procedures are set forth in 45 CFR part 1206, chapter XII, and in ACTION Handbook 2650.2.

Subpart C—Project Operations

§ 1207.3–1 Sponsor responsibility.

The sponsor is responsible for all programmatic and fiscal aspects of the project and may not delegate or contract this responsibility to another entity. The sponsor has the responsibility to:

(a) Employ, supervise and support a Project Director who will be directly responsible to the sponsor for the management of the project, including selection, training and supervision of project staff;

(b) Provide for the recruitment, assignment, supervision and support of Senior Companions. Special efforts are to be made to recruit and assign persons from minority groups, handicapped and hard-to-reach individuals, and groups in the community which are underrepresented in the project. The sponsor will stress the recruitment and enrollment of persons not already volunteering;

(c) Provide financial and in-kind support to fulfill the project's local share commitment;

(d) Establish, orient, and support an independent SCP Advisory Council;

(e) Provide the Senior Companions with not less than the minimum accident, personal liability, and excess auto liability insurance required by ACTION;

(f) Provide for appropriate recognition of the Senior Companions and their activities;

(g) Establish personnel practices, including provision of position descriptions for project staff, and service policies for Senior Companions, including grievance and appeal procedures for both volunteers and project staff;

(h) Ensure compliance with ACTION requirements relating to nondiscrimination, religious activity, political activity, lobbying, patronage toward persons related by blood or marriage, labor or anti-labor organization or related activities, nondisplacement of employed workers, nonimpairment of contracts, and noncompensation for services;

(i) Maintain project records in accordance with generally accepted accounting practice and provide for the accurate and timely preparation and submission of reports required by ACTION;

(j) Develop Senior Companion service opportunities through volunteer stations;

(k) Obtain ACTION concurrence in the selection of volunteer stations prior to the placement of Senior Companions;

(l) Negotiate, prior to placement of Senior Companions; a written Memorandum of Understanding with each volunteer station, identifying sponsor responsibilities, volunteer station responsibilities, and joint responsibilities;

(m) Orient volunteer station staff to the program and its activities;

(n) Provide not less than 40 hours of pre-service orientation to the Senior Companions;

(o) Arrange group in-service training for Senior Companions for a minimum of four hours each month;

(p) Provide or arrange for direct benefits (insurance, meals, physical examinations, recognition, stipends, transportation, and uniforms, if needed) for the Senior Companions in a timely manner;

(q) Ensure provision for volunteer safety;

(r) Comply with program regulations, policies and procedures prescribed by ACTION;

(s) Ensure that appropriate liability insurance is maintained for owned, nonowned, or hired vehicles used in the project;

(t) Develop a realistic transportation plan for the project based on lowest cost transportation modes; and

(u) Conduct an annual appraisal of volunteers' performance and an annual review of volunteers' income eligibility.

(v) Assure that individuals whose income is at or below 100 percent of the poverty level receive special consideration for participation in the Program.

[48 FR 26803, June 10, 1983, as amended at 59 FR 15122, Mar. 31, 1994]

§ 1207.3–2 Project staff.

(a) Project staff are employees of the sponsor and are subject to its personnel policies and practices.

(b) ACTION must concur in writing with the sponsor's selection of a project director before such person is employed or earns pay from grant funds.

(c) The SCP project director shall serve full time and may not be employed or serve concurrently in another capacity, paid or unpaid, during established working hours without prior approval from ACTION. This does not preclude participation of the project director in activities of related local agencies, boards or organizations for the purposes of coordination and facilitating achievement of project goals and objectives.

(d) Compensation levels for project staff, including wages, salaries and fringe benefits, should be comparable to like or similar positions in the sponsor organization and in the community.

§ 1207.3–3 Advisory Council.

An Advisory Council shall be established to advise and assist the project sponsor and staff. There shall be a separate Advisory Council for each Older American Volunteer project administered by the sponsor. When a small number of volunteers is enrolled or other special conditions prevail, this requirement may be waived by the Director of OAVP. The Advisory Council shall:

(a) Advise the project director in the formulation of local policy, planning, and the development of operational procedures and practices consistent with program policies;

(b) Assist the sponsor by promoting community support for the project, advise on personnel actions affecting volunteers and project staff, and assist in developing local financial and in-kind resources;

(c) Include in its membership, when available: Community, business and labor leaders, representatives from volunteer stations, public and private agencies, and persons specializing in the fields of aging and voluntarism. In addition, at least one-fourth of the Advisory Council shall be low-income persons aged 60 or over. This group must include Senior Companions as voting members. The sponsor's chief executive or designee, one member of its governing board, and the project director should be members of the Advisory Council but may not be officers of the Advisory Council. The sponsor's chief executive and the project director may not be voting members. The member representing the sponsor's governing board may be a voting member. The provisions of section 1207.5–1, Nondiscrimination, apply to the Advisory Council;

(d) Meet on a regular schedule and establish its own procedures, including election of officers and terms of office;

(e) Conduct an annual appraisal of project operation and submit a report to the sponsor, which shall be attached to the continuation grant application;

(f) Have an opportunity to advise the sponsor in advance on the selection or termination of the project director; and

(g) Ensure procedures are in effect to hear an appeal to actions affecting a Senior Companion adversely.

§ 1207.3–4 Volunteer station responsibility.

(a) Normally the volunteer station is an organization other than the sponsoring organization. The sponsor may function as a Senior Companion station only if the sponsor is: (1) A state organization administering a statewide Senior Companion project where the volunteer station is part of the state organization; (2) a federally-recognized Indian tribal government; or (3) in a sparsely populated area. In such sparsely populated areas, up to 10% of the enrolled volunteers may be placed directly by the sponsor.

(b) Volunteer station responsibilities include:

(1) Assisting with or arranging for volunteer transportation on or between assignments;

(2) Assisting in the provision of appropriate volunteer recognition;

(3) Developing and monitoring volunteer assignments, selecting adults to be served, supervising the volunteers, assisting the sponsor in matching volunteers to assignments and in providing

pre-service orientation and in-service training for the Senior Companions;

(4) Providing for volunteer safety;

(5) Keeping records and preparing reports required by the sponsor; and

(6) Signing, prior to the placement of Senior Companions, a Memorandum of Understanding with the sponsor establishing working relationships and mutual responsibilities, and detailing the responsibilities outlined above as well as other agreed upon responsibilities, including the particulars of the volunteers' supervision.

(i) When Senior Companions are to serve in private homes, the Memorandum of Understanding shall also require that the volunteer station obtain a Letter of Agreement from the person to be served, or the person legally responsible for that person, authorizing or requesting volunteer service in the home and indicating what specific activities are to be performed.

(ii) The Memorandum of Understanding is to be reviewed and, as appropriate, changed annually. The Memorandum may be amended at any time by mutual agreement and must be signed and dated annually to indicate that review and update, if needed, have been accomplished.

§ 1207.3–5 Senior Companions.

(a) *Eligibility*. (1) Senior Companions shall be 60 years of age or older, no longer in the regular work force, determined by a physical examination to be capable of serving adults with exceptional or special needs without detriment to either themselves or the adult served, and willing to accept supervision as required.

(2) Eligibility to be a Senior Companion may not be restricted on the basis of education, experience, citizenship, race, color, creed, belief, sex, national origin, handicap, or political affiliation.

(3) To be enrolled, a Senior Companion cannot have an annual income from all sources, after deducting allowable medical expenses, which exceeds ACTION's income eligibility guidelines for the state in which he or she resides. The ACTION income eligibility guideline for each state is 125 percent of the poverty line as set forth in section 625 of the Economic Opportunity Act of 1964, as amended by Pub. L. 92–424 (42 U.S.C. 2971d), except (i) in those primary metropolitan statistical areas (PMSA), metropolitan statistical areas (MSA) and nonmetropolitan counties identified by the Director as being higher in cost of living, as determined by application of the VISTA subsistence rates, in which case the guideline shall be 10 percent above that amount; and (ii) in Alaska, where the guideline may be waived by the ACTION State Director for individual locations if a project demonstrates that low-income individuals, in that location, are participating in the project. No Senior Companion currently participating in the Program, shall become ineligible as a result of this change in guidelines.

(4) Once enrolled, a Senior Companion shall remain eligible to serve and to receive a stipend as long as his or her annual income, after deducting allowable medical expenses, does not exceed the prescribed ACTION income eligibility guideline by 20 percent. Income eligibility shall be reviewed annually by the sponsor.

(5) Recruitment and selection of a Senior Companion may not be based on any requirement of employment experience or formal education.

(b) *Terms of service.* (1) Senior Companions serve a total of twenty hours a week, usually five days a week. Travel time between the volunteer's home and place of assignment may not be considered part of the service schedule and is not stipended. Travel time between individual assignments is a part of the service schedule. Meal time may be part of the service schedule only if meals are taken with the individual served, and the taking of meals together is deemed by the sponsor and the volunteer station to be beneficial to the person served.

(2) Senior Companions are volunteers, not employees, of the sponsor.

(c) *Direct benefits.* The total of direct benefits for Senior Companions, including stipends, insurance, transportation, meals, physical examinations, recognition, and uniforms if appropriate, shall be a sum equal to at least 90% of the amount of the ACTION Federal share of the grant. In exceptional circumstances, the Director may waive

this requirement. Federal and non-federal resources can be used to make up this sum. Direct benefits may not be subject to any tax or charge or be treated as wages or compensation for the purposes of unemployment insurance, temporary disability, retirement, public assistance, or similar benefit payments or minimum wage laws. Direct benefits include:

(1) *Insurance.* Senior companions shall be provided with the ACTION specified minimum levels of accident insurance, personal liability insurance and, when appropriate, excess automobile liability insurance.

(i) *Accident insurance.* Accident insurance shall cover Senior Companions for personal injury during travel between their homes and places of assignment, during their volunteer service, during meal periods while serving as a volunteer, and while attending project-sponsored activities, such as recognition activities, orientation and Advisory Council meetings.

Protection shall be provided against claims in excess of any benefits or services for medical care or treatment available to the volunteer from other sources including:

(A) Health insurance coverage;

(B) Other hospital or medical service plans;

(C) Any coverage under labor-management trusteed plans, union welfare plans, employer organization plans, or employee benefit organization plans; and

(D) Coverage under any governmental programs or coverage provided by any statute.

When benefits are provided in the form of services rather than by cash payments, the reasonable cash value of each service rendered shall be considered in determining the applicability of this provision. The benefits payable under a plan shall include the benefits that would have been payable had a claim been duly made therefor. The benefits payable shall be reduced to the extent necessary so that the sum of such reduced benefits and all the benefits provided for by any other plan shall not exceed the total expenses incurred by the volunteer.

(ii) *Personal liability insurance.* Protection shall be provided against claims in excess of protection provided by other insurance.

(iii) *Excess automobile liability insurance.* Protection shall be provided against claims in excess of the greater of either:

(A) Liability insurance volunteers carry on their own automobiles, or

(B) The limits of the applicable state financial responsibility law, or

(C) In the absence of a state financial responsibility law, levels of protection to be determined by ACTION for each person, each accident, and for property damage.

Senior Companions who drive their personal vehicles to or on assignments or project related activities must maintain personal automobile liability insurance equal to or exceeding the levels established by paragraph (c)(1)(iii) (B) or (C) of this section.

(2) *Meals.* Within the limits of available resources and project policy, Senior Companions will be provided or will receive assistance with the cost of meals taken during their service schedule.

(3) *Physical examinations.* Senior Companions are required to have a physical examination prior to assignment and annually thereafter.

(4) *Appropriate recognition* will be provided for Senior Companions.

(5) *Stipends.* A Senior Companion will receive a stipend in an amount determined by ACTION and payable in regular installments. The minimum amount of the stipend is set by law and may be adjusted by the Director from time to time. When both the eligible husband and wife serve as a Foster Grandparent or Senior Companion, only one spouse shall be entitled to receive a stipend. Both spouses in such cases shall be entitled to other direct benefits. Only in cases where enrolled Foster Grandparents or Senior Companions marry, may each continue to receive a stipend.

(6) *Transportation.* Senior Companions shall be provided transportation or receive assistance with the cost of transportation to and from volunteer assignments and official project activities, including orientation, training, advisory council meetings and recognition events. Reimbursement will be within the limits of available resources

and project policy. Project funds may not be utilized to reimburse Senior Companions for transportation provided for or on behalf of clients.

[48 FR 26803, June 10, 1983, as amended at 59 FR 15122, Mar. 31, 1994]

§ 1207.3–6 Senior companion assignments.

(a) Assignments and activities must involve person-to-person relationships with the individuals served and may not include service to the volunteer station.

(b) Individuals served by Senior Companions must be adults, primarily older adults, who have one or more physical, emotional, or mental health limitations and are in need of assistance to achieve and maintain their highest level of independent living.

§ 1207.3–7 Non-stipended volunteers

(a) *Purpose:* Projects are encouraged to enroll persons aged 60 and over, who are not low-income, as non-stipended volunteers in order to:

(1) Open opportunities for and tap the unused resources of older Americans, and

(2) Expand needed services to unserved and underserved populations.

(b) *Conditions of Service:* (1) Over-income persons, age 60 or over, may not be enrolled in SCP projects as non-stipended volunteers in communities where a Retired Senior Volunteer Program (RSVP) project is available and the RSVP project is willing and able to assume the management role of placing the volunteer at an SCP volunteer station. When a Senior Companion project is contacted by an individual expressing an interest in serving as a non-stipended volunteer, the project shall contact the ACTION State Office for its determination as to whether:

(i) Enrollment in the project is appropriate,

(ii) The volunteer should be referred to an RSVP project that has agreed, in writing, to serve in the prescribed management role.

(2) Non-stipended volunteers serve under the following conditions:

(i) Their service must not supplant, replace, or displace any stipended volunteers.

(ii) No special privilege or status is granted or created among volunteers, stipended or non-stipended, and equal treatment is required.

(iii) Training, supervision, and other support services and direct benefits, other than the stipend, are available equally to all volunteers.

(iv) All regulations and requirements applicable to the program, with the exception listed in paragraph (b)(2)(vi) of this section, apply to all volunteers.

(v) Non-stipended volunteers may be placed in separate volunteer stations where warranted.

(vi) Non-stipended volunteers serving in SCP volunteer stations will be encouraged but not required to serve 20 hours per week and 50 weeks per year. Volunteers will maintain a close one-to-one relationship with clients, and will serve a minimum of two clients on a regular basis.

(vii) Non-stipended volunteers may contribute the cost of direct benefits.

(3) There are no requirements on either SCP or RSVP projects to enroll non-stipended volunteers. Implementation of these regulations by a local project may not be a factor in awarding new or renewal grants.

(c) *Funding:* No appropriated funds for SCP may be used to pay any cost, including any administrative cost, incurred in implementing these regulations. Such costs may be paid with:

(1) Funds received by the Director as unrestricted gifts.

(2) Funds received by the Director as gifts to pay such costs.

(3) Funds contributed by non-stipended volunteers.

(4) Locally-generated contributions in excess of the amount required by law.

[52 FR 32133, Aug. 26, 1987]

Subpart D—Non-ACTION Funded Projects

§ 1207.4–1 Memorandum of agreement.

(a) If an eligible agency or organization wishes to sponsor a project without ACTION funding, and wishes to receive technical assistance and materials from ACTION, it must sign a

Memorandum of Agreement with ACTION identifying mutual responsibilities and certifying its intent to comply with ACTION regulations.

(b) A non-ACTION funded project sponsor's noncompliance with the Memorandum of Agreement may result in suspension or termination of ACTION's technical assistance to the project.

(c) Termination of the agreement by either the project sponsor or ACTION will result in loss of the tax exempt status of volunteer direct benefits allowable to Senior Companions and loss of coverage by the statutory provision that receipt of the stipend will not affect the volunteers' eligibility for any governmental assistance.

(d) Entry into a Memorandum of Agreement with a sponsoring agency which does not receive ACTION funds will not, under any circumstances, create a financial obligation on the part of ACTION for costs associated with the project including increases in required payments to volunteers which may result from changes in the Act or in ACTION regulations.

Subpart E—Sanctions and Legal Representation

§ 1207.5–1 Special limitations.

(a) *Political activities.* (1) No part of any grant shall be used to finance, directly or indirectly, any activity to influence the outcome of any election to public office, or any voter registration activity.

(2) No project shall be conducted in a manner involving the use of funds, the provision of services, or the employment or assignment of personnel in a manner supporting or resulting in the identification of such project (i) any partisan or nonpartisan political activity associated with a candidate, or contending faction or group, in an election or, (ii) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election, or (iii) any voter registration activity.

(3) No Senior Companion or employee of a sponsor or volunteer station may take any action, when serving in such capacity, with respect to a partisan or nonpartisan political activity that would result in the identification or apparent identification of the Senior Companion Program with such activity.

(4) No grant funds may be used by the sponsor in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except

(i) In any case in which a legislative body, a committee of a legislative body, or a member of a legislative body requests a Senior Companion, a sponsor chief executive, his or her designee, or project staff to draft, review or testify regarding measures or to make representation to such legislative body, committee or member, or (ii) In connection with an authorization or appropriations measure directly affecting the operation of the Senior Companion Program.

Prohibitions on Electoral and Lobbying Activities are fully set forth in 45 CFR part 1226 and in ACTION Handbook 2650.2.

(b) *Restrictions on State or local government employees.* If the sponsor is a State or local government agency which received a grant from ACTION, certain restrictions contained in chapter 15 of title 5 of the United States Code are applicable. They are related to persons who are principally employed in activities associated with the project. The restrictions are not applicable to employees of educational or research institutions. An employee subject to these restrictions may not:

(1) Use his/her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office; or

(2) Directly or indirectly coerce, attempt to coerce, command or advise a State or local officer or employee to pay, lend, or contribute anything of value to a political party, committee, organization, agency, or person for a political purpose; or

(3) Be a candidate for elective office, except in a nonpartisan election. ''Nonpartisan election'' means an election at which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected.

(c) *Religious activities.* Senior Companions and project staff funded by ACTION shall not give religious instruction, conduct worship services or engage in any form of proselytization as part of their duties.

(d) *Nondiscrimination.* For purposes of this subpart, and for purposes of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000 d *et seq.*), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the Age Discrimination Act of 1975 (Pub. L. 94–135, title III; 42 U.S.C. 6101 *et seq.*), any program, project, or activity to which volunteers are assigned under this Act shall be deemed to be receiving federal financial assistance.

(1) No person with responsibility in the operation of a project shall discriminate with respect to any activity or program because of race, creed, belief, color, national origin, sex, age, handicap, or political affiliation.

(2) Sponsors are required to take affirmative action to overcome the effects of prior discrimination. Even in the absence of prior discrimination, a sponsor may take affirmative action to overcome conditions which resulted in limiting participation.

(3) No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with a Senior Companion project.

(e) *Labor and anti-labor activity.* No grant funds shall be directly or indirectly utilized to finance labor or anti-labor organization or related activity.

(f) *Nondisplacement of employed workers.* A Senior Companion may not perform any service or duty or engage in any activity which would otherwise be performed by an employed worker or which would supplant the hiring of employed workers.

(g) *Nonimpairment of contracts.* A Senior Companion may not perform any service, or duty, or engage in any activity which impairs an existing contract for service. The term ''contract for service'' includes but is not limited to contracts, understandings, and arrangements, either written or oral, to provide professional, managerial, technical, or administrative services.

(h) *Noncompensation for services.* No person, organization, or agency shall request or receive any compensation for services of Senior Companions.

(i) *Nepotism.* Persons selected for projects staff positions may not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors, unless there is concurrence by the Advisory Council, with notification to ACTION.

(j) *Volunteer separation.* A sponsor may separate a volunteer for cause, including, but not limited to, extensive or unauthorized absences, misconduct, inability to perform assignments or having income in excess of the eligibility level established by ACTION.

§ 1207.5–2 Legal representation.

Counsel may be employed and counsel fees, court costs, bail, and other expenses incidental to the defense of a Senior Companion may be paid in a criminal, civil or administrative proceeding, when such a proceeding arises directly out of the performance of the Senior Companion activities. 45 CFR part 1220 establishes the circumstances under which ACTION may pay such expenses.

PART 1208—FOSTER GRANDPARENT PROGRAM

Subpart A—General

Sec.

Subpart B—Project Development and Funding

Subpart C—Project Operations

AUTHORITY: Secs. 211(a), 212, 221, 222, 223, 402(14) and 420 of Pub. L. 93–113, 87 Stat. 402, 403, 404, 407 and 414, 42 U.S.C. 5011 (a) and (f), 5012, 5021, 5022, 5023, 5042(14), and 5060.

SOURCE: 48 FR 26809, June 10, 1983, unless otherwise noted.

Subpart A—General

§ 1208.1–1 Purpose of the program.

The Foster Grandparent Program (FGP) is authorized under title II, part B, of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113). The dual purpose of the program is to provide opportunities for low-income persons aged 60 or over to give supportive person-to-person service in health, education, welfare or related settings to help alleviate the physical, mental, or emotional problems of children having exceptional or special needs.

§ 1208.1–2 Definitions.

Terms used in this part are defined as follows:

Act is the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113, 87 Stat. 394, 42 U.S.C. 4951).

Advisory Council is a group of persons formally organized by the project sponsor for the purpose of advising and supporting the sponsor in operating the project effectively.

Agency is the federal ACTION agency.

Allowable medical expenses are annual out-of-pocket expenses for health insurance premiums, health care services, and medications provided to the applicant, enrollee, or spouse and were not and will not be paid for by Medicare, Medicaid, other insurance, or other third party and, shall not exceed 15 percent of the applicable ACTION income guideline.

Annual Income is counted for the past 12 months and includes: The applicant or enrollee's income and, the applicant or enrollee's spouse's income, if the spouse lives in the same residence. Project directors may count the value of shelter, food, and clothing, if provided at no cost by persons related to the applicant, enrollee, or spouse.

Child is any individual under 21 years of age.

Children having exceptional needs are those who are developmentally disabled such as those who are mentally retarded, autistic, have cerebral palsy or epilepsy or are visually handicapped, speech impaired, hearing impaired, orthopedically impaired, multi-handicapped, emotionally disturbed or have a language disorder, specific learning disability or other significant health impairment. Existence of a child's exceptional need shall be verified by an appropriate professional, such as a physician, psychiatrist, psychologist, registered nurse or licensed practical nurse, speech therapist or educator before a Foster Grandparent is assigned to the child.

Children with special needs includes those who are: Abused or neglected; in need of foster care; status offenders; juvenile delinquents; runaway youths; certain teen-age parents; and children in need of protective intervention in their homes. Existence of a child's special need shall be verified by an appropriate professional before a Foster Grandparent is assigned to the child.

Direct Benefits are stipends, meals, transportation, annual physical examinations, volunteer insurance, recognition and uniforms included in the budget as *Volunteer Expenses.*

Director is the Director of ACTION.

Federally recognized Indian tribal government means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided through the Bureau of Indian Affairs.

Handbook is the FGP Handbook No. 4405.90 which contains policies for implementing these regulations.

Handicapped is a person or persons having physical or mental impairments that substantially limit one or more major life activities.

Hard-to-reach individuals are those who are physically or socially isolated because of factors such as language, disability, or inadequate transportation.

Individual Care or Treatment Plan is a written description of a Foster Grandparent's assignment with a child. The plan defines the goals for the child to be attained through the relationship with a Foster Grandparent and the specific activities to be performed by the Foster Grandparent in the assignment.

In-home refers to non-institutional assignment of a Foster Grandparent in a private residence, a foster home, or a group home.

Letter of Agreement is a written agreement between a volunteer station, the project sponsor, and the person or persons legally responsible for the child served. It authorizes the assignment of a Foster Grandparent in the child's home, defines the Foster Grandparent's activities and delineates specific arrangements for supervision.

Memorandum of Understanding is a written statement prepared and signed by the Foster Grandparent project sponsor and the volunteer station which identifies project requirements, working relationships and mutual responsibilities.

OAVP refers to the Older American Volunteer Programs, which include: the Foster Grandparent Program, the Retired Senior Volunteer Program, and the Senior Companion Program.

Parent is a natural parent or a person acting in place of a natural parent, such as a child's natural grandparent, or a step-parent with whom the child lives. The term also includes otherwise unrelated individuals who are legally responsible for a child's welfare.

Project is the locally planned and implemented Foster Grandparent Program activity as agreed upon between ACTION and the sponsor.

Service Area is a geographically defined area in which Foster Grandparents are recruited, enrolled, and placed on assignments.

Service Schedule is the 20 hours per week that a Foster Grandparent serves.

Sponsor is a public agency or private nonprofit organization which is responsible for the operation of the Foster Grandparent project.

Stipend is a payment to Foster Grandparents to enable them to serve without cost to themselves.

United States and States mean the several states, the District of Columbia, the Virgin Islands, Puerto Rico, Guam, American Samoa and the Trust Territory of the Pacific Islands.

Volunteer Station means a public agency, private nonprofit organization or proprietary health care agency or organization that accepts the responsibility for assignment and supervision of Foster Grandparents in health, education, welfare or related settings such as private homes, hospitals, homes for dependent and neglected children, or similiar establishments.

Each volunteer station must be licensed or otherwise certified, when required, by the appropriate state or local government.

Private homes are not volunteer stations.

[48 FR 26809, June 10, 1983; 48 FR 44797, Sept. 30, 1983, as amended at 59 FR 15122, Mar. 31, 1994]

§ 1208.1–3 Coordination.

The sponsor shall coordinate activities with project-related groups and individuals, including those representing government, industry, labor, volunteer organizations, programs for children, programs for the aging, including State and Area Agencies on Aging, and other ACTION programs, to facilitate cooperation with existing or planned community services and to develop community support.

Subpart B—Project Development and Funding

§ 1208.2–1 Inquiries.

Inquiries regarding the Foster Grandparent Program application process, program criteria, or the availability of funds, should be directed to the ACTION State Office serving the inquirer's own state. ACTION headquarters office in Washington, DC will assist in directing inquiries to the appropriate state office.

§ 1208.2–2 Local support.

An ACTION grant may be awarded to fund up to 90% of the cost of development and operation of a Foster Grandparent project. The sponsor is required to contribute at least 10% of the total project cost. Stipend payments in excess of the amount established by ACTION may not be included as part of the local support commitment. In exceptional circumstances the Director may approve assistance for more than 90% of the total project cost if:

(a) The project is located in an area where local resources are too limited to provide 10%; or

(b) A test project is determined to be of exceptional value, sufficient to warrant Federal support in excess of 90% of the total project cost.

§ 1208.2–3 Sponsor eligibility and solicitation of proposals.

(a) *Sponsor eligibility*. ACTION will award grants only to public agencies and private non-profit organizations in the United States which have the authority to accept and the capability to administer such grants.

(b) *Solicitation of Proposals.* (1) Any eligible organization may file an application for a grant. Applicants may also be solicited by ACTION pursuant to its objective of achieving equitable program resource distribution. Solicited applications are not assured of selection or approval and may have to compete with other solicited or unsolicited applications.

(2) Grants for projects to be carried out over an area in a state more comprehensive than one community shall be awarded to the State Agency on Aging unless:

(i) The state has not established or designated such an agency, or

(ii) Such agency has been afforded at least 45 days to review and make recommendations on a prospective sponsor's application.

(3) Grants for projects to be carried out entirely in a community served by a Community Action Agency shall be awarded to that agency unless that agency and the State Agency on Aging have been afforded at least 45 days to review and make recommendations on a new grant application.

(4) In the event that the State Agency on Aging or the Community Action Agency is not awarded the applicable grant, any application that is approved will contain or be supported by satisfactory assurances that the project has been developed and will, to the extent feasible, be conducted in consultation with, or with the participation of, such agencies.

§ 1208.2–4 Project proposals.

(a) Applicants shall use standard forms prescribed by ACTION. ACTION State Offices will provide applicants with guidance and any additional instruction necessary to plan and budget proposed program activities.

(b) Agencies and organizations submitting grant applications must comply with the provisions of Executive Order 12372, the ''Intergovernmental Review of Federal Programs and Activities,'' as set forth in 45 CFR part 1233.

(c) A potential sponsor must submit one copy of an application for a new FGP project to the State Agency on Aging, which has 45 days to review the application and make recommendations. The State Agency on Aging shall state in writing to ACTION its recommendations and reasons within this time period or will be considered to have waived its rights under this part.

§ 1208.2–5 Review of project proposals.

(a) The ACTION State Office for the applicant's state will review the grant application to ensure that program requirements are complied with and that required documentation has been attached.

(b) If not approved, the application will be returned to the applicant with explanation of ACTION's decision. The unsuccessful applicant may reapply when the inadequacy, if any, found in the application is resolved.

§ 1208.2–6 Awards.

(a) ACTION will, within funds available, award a grant in writing to those applicants whose grant proposals provide the best potential for serving the purpose of the program. The award will be documented by *Notice of Grant Award* [NGA].

(b) The parties to the NGA are ACTION and the sponsoring organization. The NGA will document the sponsor's commitment to fulfill specific programmatic objectives and financial obligations. It will document the extent of ACTION's obligation to provide financial support to the sponsor.

(c) A sponsor may receive a grant award for more than one OAVP project.

§ 1208.2–7 Grant management.

(a) Sponsors shall manage grants awarded to them in accordance with these regulations. ACTION Handbook 2650.2 entitled, *Grants Management Handbook for Grantees,* and the FGP Handbook No. 4405.90. A copy of each document will be furnished to the sponsor at the time the initial grant is awarded.

(b) Project support provided under an ACTION grant shall be furnished at the lowest possible cost consistent with the effective operation of the project.

(c) Project costs for which ACTION funds are budgeted must be justified as being essential to project operation.

§ 1208.2–8 Suspension, termination and denial of refunding.

Grant suspension, termination and denial of refunding procedures are set forth in 45 CFR part 1206, chapter XII, and in ACTION Handbook 2650.2.

Subpart C—Project Operations

§ 1208.3–1 Sponsor responsibility.

The sponsor is responsible for all programmatic and fiscal aspects of the project and may not delegate or contract this responsibility to another entity. The sponsor has the responsibility to:

(a) Employ, supervise and support a Project Director, who will be directly responsible to the sponsor for the management of the project, including selection, training and supervision of project staff:

(b) Provide for the recruitment, assignment, supervision and support of Foster Grandparents. Special efforts are to be made to recruit and assign persons from minority groups, handicapped and hard-to-reach individuals, and groups in the community which are underrepresented in the project. The sponsor will stress the recruitment and enrollment of persons not already volunteering;

(c) Provide financial and in-kind support to fulfill the project's local share commitment;

(d) Establish, orient and support an independent FGP Advisory Council;

(e) Provide Foster Grandparents with not less than the minimum accident, personal liability, and excess auto liability insurance required by ACTION:

(f) Provide for appropriate recognition of the Foster Grandparents and their activities;

(g) Establish personnel practices, including provision of position descriptions for project staff, and service policies for Foster Grandparents, including grievance and appeal procedures for both volunteers and project staff;

(h) Ensure compliance with ACTION requirements relating to nondiscrimination, religious activity, political activity, lobbying, patronage toward persons related by blood or marriage, labor or anti-labor organization or related activities, nondisplacement of employed workers, nonimpairment of contracts, and noncompensation for services;

(i) Maintain project records in accordance with generally accepted accounting practice and provide for the accurate and timely preparation and submission of reports required by ACTION;

(j) Develop Foster Grandparent service opportunities through volunteer stations;

(k) Obtain ACTION concurrence in the selection of volunteer stations prior to the placement of Foster Grandparents.

(l) Negotiate, prior to placement of Foster Grandparents, a written Memorandum of Understanding with each volunteer station, identifying sponsor responsibilities, volunteer station responsibilities and joint responsibilities;

(m) Orient volunteer station staff to the Program and its activities;

(n) Provide not less than 40 hours of pre-service orientation to Foster Grandparents;

(o) Arrange group in-service training for Foster Grandparents for a minimum of four hours each month;

(p) Provide or arrange for direct benefits (insurance, meals, physical examinations, recognition, stipends, transportation and uniforms, if needed) for the Foster Grandparents in a timely manner;

(q) Ensure provision for volunteer safety;

(r) Comply with program regulations, policies and procedures prescribed by ACTION;

(s) Ensure that appropriate liability insurance is maintained for owned, nonowned, or hired vehicles used in the project;

(t) Develop a realistic transportation plan for the project based on the lowest cost transportation modes; and

(u) Conduct an annual appraisal of volunteers' performance and an annual review of volunteers' income eligibility.

(v) Assure that individuals whose income is at or below 100 percent of the poverty level receive special consideration for participation in the Program.

[48 FR 26809, June 10, 1983, as amended at 59 FR 15122, Mar. 31, 1994]

§ 1208.3–2 Project staff.

(a) Project staff are employees of the sponsor and are subject to its personnel policies and practices.

(b) ACTION must concur in writing with the sponsor's selection of a project director before such person is employed or earns pay from grant funds.

(c) The FGP Project Director shall serve full time and may not be employed or serve concurrently in another capacity, paid or unpaid, during established working hours, without prior approval from ACTION. This does not preclude participation of the project director in activities of related local agencies, boards or organizations for the purposes of coordination and facilitating achievement of project goals and objectives.

(d) Compensation levels for project staff, including wages, salaries and fringe benefits, should be comparable to like or similar positions in the sponsor organization and in the community.

[48 FR 26809, June 10, 1983; 48 FR 44797, Sept. 30, 1983]

§ 1208.3–3 Advisory Council.

An Advisory Council shall be established to advise and assist the project sponsor and staff. There shall be a separate Advisory Council for each Older American Volunteer project administered by the sponsor. When a small number of volunteers is enrolled or other special conditions prevail, this requirement may be waived by the Director of OAVP. The Advisory Council shall;

(a) Advise the project director in the formulation of local policy, planning, and the development of operational procedures and practices consistent with program policies;

(b) Assist the sponsor by promoting community support for the project, advise on personnel actions affecting volunteers and project staff, and assist in developing local financial and in-kind resources;

(c) Include in its membership, when available: community, business and labor leaders, representatives from volunteer stations, public and private agencies, and persons specializing in the fields of aging, child development and voluntarism. In addition, at least one-fourth of the Advisory Council shall be low-income persons aged 60 or over. This group must include Foster Grandparents as voting members. The sponsor's chief executive or designee, one member of its governing board, and the project director should be members of the Advisory Council but may not be officers of the Advisory Council. The sponsor's chief executive and the project director may not be voting members. The member representing the sponsor's governing board may be a voting member. The provisions of § 1208.5–1(d), Nondiscrimination, apply to the Advisory Council;

(d) Meet on a regular schedule and establish its own procedures, including election of officers and terms of office;

(e) Conduct an annual appraisal of project operation and submit a report to the sponsor, which shall be attached to the continuation grant application;

(f) Have an opportunity to advise the sponsor in advance on the selection or termination of the project director; and

(g) Ensure procedures are in effect to hear an appeal to actions affecting a Foster Grandparent adversely.

[48 FR 26809, June 10, 1983; 48 FR 44797, Sept. 30, 1983]

§ 1208.3–4 Volunteer station responsibility.

(a) Normally the volunteer station is an organization other than the sponsoring organization. The sponsor may function as a Foster Grandparent volunteer station only if the sponsor is:

(1) A state organization administering a statewide Foster Grandparent project where the volunteer station is part of the state organization, (2) a Federally recognized Indian tribal government, or (3) in a sparsely populated area. In such sparsely populated areas, up to 10% of the enrolled volunteers may be placed directly by the sponsor.

(b) Volunteer Station responsibilites include:

(1) Assisting with or arranging for volunteer transportation on or between assignments;

(2) Assisting in the provision of appropriate volunteer recognition;

(3) Developing and monitoring volunteer assignments, selecting children to be served, supervising the volunteers, assisting the sponsor in matching volunteers to assignments and in providing pre-service orientation and in-service training for the Foster Grandparents;

(4) Providing for volunteer safety;

(5) Keeping records and preparing reports required by the sponsor; and

(6) Signing, prior to the placement of Foster Grandparents, a Memorandum of Understanding with the sponsor establishing working relationships and mutual responsibilities, and detailing the responsibilities outlined above, as well as other agreed upon responsibilities, including the particulars of the volunteers' supervision.

(i) When Foster Grandparents are to serve in private homes, the Memorandum of Understanding shall also require that the volunteer station obtain a Letter of Agreement from the child's parent(s) authorizing or requesting volunteer service in the home and indicating what specific activities are to be performed. This agreement will constitute an individual care plan and will be followed for the child served by a Foster Grandparent in an in-home placement.

(ii) The Memorandum of Understanding is to be reviewed and, as appropriate, changed annually. It may be amended at any time by mutual agreement and must be signed and dated annually to indicate that review and update, if needed, have been accomplished.

§ 1208.3–5 Foster grandparents.

(a) *Eligibility*. (1) Foster Grandparents shall be 60 years of age or older, no longer in the regular work force, determined by a physical examination to be capable of serving children with exceptional or special needs without detriment to either themselves or the children served, and willing to accept supervision as required.

(2) Eligibility to be a Foster Grandparent may not be restricted on the basis of education, experience, citizenship, race, color, creed, belief, sex, national origin, handicap, or political affiliation.

(3) To be enrolled, a Foster Grandparent cannot have an annual income from all sources, after deducting allowable medical expenses, which exceeds ACTION's income eligibility guidelines for the state in which he or she resides. The ACTION income eligibility guidelines for each state is 125 percent of the poverty line as set forth in section 625 of the Economic Opportunity Act of 1964, as amended by Pub. L. 92–424 (42 U.S.C. 2971d), except: (i) In those primary metropolitan statistical areas (PMSA), metropolitan statistical areas (MSA) and nonmetropolitan counties identified by the Director as being higher in cost of living, as determined by application of the VISTA subsistence rates, in which case the guideline shall be 10 percent above that amount; and (ii) in Alaska, where the guideline may be waived by the ACTION State Director for individual locations if a project demonstrates that low-income individuals in that location are participating in the project. No Foster Grandparent currently participating in the Program, shall become ineligible as a result of this change in guidelines.

(4) Once enrolled, a Foster Grandparent shall remain eligible to serve

and to receive a stipend as long as his or her annual income, after deducting allowable medical expenses, does not exceed the prescribed ACTION income eligibility guideline by 20 percent. Income eligibility shall be reviewed annually by the sponsor.

(5) Recruitment and selection of a Foster Grandparent may not be based on any requirement of employment experience or formal education.

(b) *Terms of service.* (1) Foster Grandparents serve a total of twenty hours a week, usually five days a week. Travel time between the volunteer's home and place of assignment may not be considered part of the service schedule and is not stipended. Travel time between individual assignments is a part of the service schedule. Meal time may be part of the service schedule only if meals are taken with the individual served, and the taking of meals together is deemed by the sponsor and the volunteer station to be beneficial to the person served.

(2) Foster Grandparents are volunteers, not employees, of the sponsor.

(c) *Direct benefits.* The total of direct benefits for Foster Grandparents, including stipends, insurance, transportation, meals, physical examinations, recognition, and uniforms if appropriate, shall be a sum equal to at least 90 percent of the amount of the ACTION federal share of the grant award. In exceptional circumstances, the Director may waive this requirement. Federal and non-federal resources can be used to make up this sum. Direct benefits may not be subject to any tax or charge or be treated as wages or compensation for the purposes of unemployment insurance, temporary disability, retirement, public assistance, or similar benefit payments or minimum wage laws. Direct Benefits include:

(1) *Insurance.* Foster Grandparents shall be provided with the ACTION-specified minimum levels of accident insurance, personal liability insurance and, when appropriate, excess automobile liability insurance.

(i) *Accident insurance.* Accident insurance shall cover Foster Grandparents for personal injury during travel between their homes and places of assignment, during their volunteer service, during meal periods while serving as a volunteer, and while attending project-sponsored activities, such as recognition activities, orientation and Advisory Council meetings. Protection shall be provided against claims in excess of any benefits or services for medical care or treatment available to the volunteer from other sources, including:

(A) Health insurance coverage;

(B) Other hospital or medical service plans;

(C) Any coverage under labor-management trusteed plans, union welfare plans, employer organization plans, or employee benefit organization plans; and

(D) Coverage under any governmental programs, or coverage provided by any statute.

When benefits are provided in the form of services rather than by cash payments, the reasonable cash value of each service rendered shall be considered in determining the applicability of this provision. The benefits payable under a plan shall include the benefits that would have been payable had a claim been duly made therefor. The benefits payable shall be reduced to the extent necessary so that the sum of such reduced benefits and all the benefits provided for by any other plan shall not exceed the total expenses incurred by the volunteer.

(ii) *Personal Liability Insurance.* Protection shall be provided against claims in excess of protection provided by other insurance.

(iii) *Excess Automobile Liability Insurance.* Protection shall be provided against claims in excess of the greater of either:

(A) Liability insurance volunteers carry on their own automobiles, or

(B) The limits of applicable state financial responsibility law, or

(C) In the absence of a state financial responsibility law, levels of protection to be determined by ACTION for each person, each accident, and for property damage.

Foster Grandparents who drive their personal vehicles to or on assignments or project-related activities must maintain personal automobile liability insurance equal to or exceeding the

levels established by paragraph (c)(1)(iii) (B) or (C) of this section.

(2) *Meals.* Within the limits of available resources and project policy, Foster Grandparents will be provided or will receive assistance with the cost of meals taken during their service schedule.

(3) *Physical Examinations.* Foster Grandparents are required to have a physical examination prior to assignment and annually thereafter.

(4) *Appropriate Recognition* will be provided for Foster Grandparents.

(5) *Stipends.* A Foster Grandparent will receive a stipend in an amount determined by ACTION and payable in regular installments. The minimum amount of the stipend is set by law and may be adjusted by the Director from time to time. When both the eligible husband and wife serve as a Foster Grandparent or Senior Companion, only one spouse shall be entitled to receive a stipend. Both spouses in such cases shall be entitled to other direct benefits. Only in cases where enrolled Foster Grandparents or Senior Companions marry, may each continue to receive a stipend.

(6) *Transportation.* Foster Grandparents shall be provided transportation or receive assistance with the cost of transportation to and from volunteer assignments and official project activities, including orientation, training, advisory council meetings and recognition events. Reimbursement will be within the limits of available resources and project policy. Project funds may not be utilized to reimburse Foster Grandparents for transportation provided for or on behalf of children.

[48 FR 26809, June 10, 1983; 48 FR 44797, Sept. 30, 1983, as amended at 59 FR 15122, Mar. 31, 1994]

§ 1208.3–6 Foster grandparent assignments.

(a) Foster Grandparents shall serve children with special or exceptional needs.

(b) Priority consideration shall be given to placing Foster Grandparents in assignments where: those assignments constitute early intervention; there is a possibility for significant improvement in the quality of life for the children served, and there is a probability of a long-term relationship between the Foster Grandparent and the child.

(c) Priority consideration shall also be given to preventing or minimizing institutionalization by placing Foster Grandparents with children in-home, in special education classes, in special training centers, in developmental centers, in day care centers for children with exceptional or special needs, in hospitals, and in the juvenile justice system.

(d) The individualized care plan for a Foster Grandparent to follow in each in-home assignment he or she receives, should include the projected role and functions of the Foster Grandparent, be updated on a regular basis, and be used as a guide for evaluating the child's development and the Foster Grandparent's role.

(e) Where state, county or local sponsor's definition(s) of children having exceptional needs and children with special needs vary from the definitions in § 1208.1–2 of these regulations, ACTION will determine the suitability of non-ACTION definition(s) in regard to placement of Foster Grandparents with children.

(f) Foster Grandparent activities develop person-to-person, supportive relationships with children and do not provide service to volunteer stations or any other agency or organization where volunteers serve. Activities of Foster Grandparents should serve the dual purpose of being personally meaningful to the volunteers themselves and providing support and companionship to the children served.

[48 FR 26809, June 10, 1983; 48 FR 44797, Sept. 30, 1983]

§ 1208.3–7 Children served.

(a) Identification of individual children to receive supportive person-to-person services from a Foster Grandparent is a responsibility of volunteer station professional staff and will be made in accordance with criteria specified in § 1208.3–6. Actual Foster Grandparent assignments to individual children and a determination of the length of time each child should receive such services will be made with concurrence of the sponsor or his or her designee,

usually the project director, in accordance with the Memorandum of Understanding described in § 1208.3–1(l).

(b) Foster Grandparent concurrence with assignments to individual children is required.

(c) Preference will be given to assigning Foster Grandparents to young children. Each Foster Grandparent shall preferably, but not exclusively, be assigned to two children.

(d) When a Foster Grandparent is assigned to a mentally retarded child, that assignment may continue beyond the child's 21st birthday, provided:

(1) That such child was receiving such services prior to attaining the chronological age of 21;

(2) That the public or private nonprofit agency (volunteer station) responsible for providing services to the child determines that it is in the best interest of both the Foster Grandparent and the child; and

(3) There is mutual agreement by all parties with respect to provision of services to the child involved.

[48 FR 26809, June 10, 1983; 48 FR 44797, 44798, Sept. 30, 1983]

§ 1208.3–8 Non-stipended volunteers.

(a) *Purpose:* Projects are encouraged to enroll persons aged 60 and over, who are not low-income, as non-stipended volunteers in order to:

(1) Open opportunities for and tap the unused resources of older Americans, and

(2) Expand needed services to unserved and underserved populations.

(b) *Conditions of Service:* (1) Over-income persons, age 60 or over, may not be enrolled in FGP projects as non-stipended volunteers in communities where a Retired Senior Volunteer Program (RSVP) project is available and the RSVP project is willing and able to assume the management role of placing the volunteer at an FGP volunteer station. When a Foster Grandparent project is contacted by an individual expressing an interest in serving as a non-stipended volunteer, the project shall contact the ACTION State Office for its determintion as to whether:

(i) Enrollment in the project is appropriate,

(ii) The volunteer should be referred to an RSVP project that has agreed, in writing, to serve in the prescribed management role.

(2) Non-stipended volunteers serve under the following conditions:

(i) Their service must not supplant, replace, or displace any stipended volunteers.

(ii) No special privilege or status is granted or created among volunteers, stipended or non-stipended, and equal treatment is required.

(iii) Training, supervision, and other support services and direct benefits, other than the stipend, are available equally to all volunteers.

(iv) All regulations and requirements applicable to the program, with the exception listed in paragraph (b)(2)(vi) of this section, apply to all volunteers.

(v) Non-stipended volunteers may be placed in separate volunteer stations where warranted.

(vi) Non-stipended volunteers serving in FGP volunteer stations will be encouraged but not required to serve 20 hours per week and 50 weeks per year. Volunteers will maintain a close one-to-one relationship with clients, and will serve a minimum of two clients on a regular basis.

(vii) Non-stipended volunteers may contribute the cost of direct benefits.

(3) There are no requirements on either FGP or RSVP projects to enroll non-stipended volunteers. Implementation of these regulations by a local project may not be a factor in awarding new or renewal grants.

(c) *Funding:* No appropriated funds for FGP may be used to pay any cost, including any administrative cost, incurred in implementing these regulations. Such costs may be paid with:

(1) Funds received by the Director as unrestricted gifts.

(2) Funds received by the Director as gifts to pay such costs.

(3) Funds contributed by non-stipended volunteers.

(4) Locally-generated contributions in excess of the amount required by law.

[52 FR 32134, Aug. 26, 1987]

Subpart D—Non–ACTION Funded Projects

§ 1208.4–1 Memorandum of agreement.

(a) If an eligible agency or organization wishes to sponsor a project without ACTION funding, and wishes to receive technical assistance and materials from ACTION, it must sign a Memorandum of Agreement with ACTION identifying mutual responsibilities and certifying its intent to comply with ACTION regulations.

(b) A non-ACTION funded project sponsor's noncompliance with the Memorandum of Agreement may result in suspension or termination of ACTION's technical assistance to the project.

(c) Termination of the agreement by either the project sponsor or ACTION will result in loss of the tax exempt status of volunteer direct benefits allowable to Foster Grandparents and loss of coverage by the statutory provision that receipt of the stipend will not affect the volunteers' eligibility for any governmental assistance.

(d) Entry into a Memorandum of Agreement with a sponsoring agency which does not receive ACTION funds will not, under any circumstances, create a financial obligation on the part of ACTION for costs associated with the project including increases in required payments to volunteers which may result from changes in the Act or in ACTION regulations.

Subpart E—Sanctions and Legal Representation

§ 1208.5–1 Special limitations.

(a) *Political activities.* (1) No part of any grant shall be used to finance, directly or indirectly, any activity to influence the outcome of any election to public office, or any voter registration activity.

(2) No project shall be conducted in a manner involving the use of funds, the provision of services or the employment or assignment of personnel in a matter supporting or resulting in the identification of such project with (i) any partisan or nonpartisan political activity associated with a candidate, or contending faction or group, in an election, or (ii) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election, or (iii) any voter registration activity.

(3) No Foster Grandparent or employee of a sponsor or volunteer station may take any action, when serving in such capacity, with respect to a partisan or nonpartisan political activity that would result in the identification or apparent identification of the Foster Grandparent Program with such activity.

(4) No grant funds may be used by the sponsor in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except

(i) In any case in which a legislative body, a committee of a legislative body, or a member of a legislative body requests a Foster Grandparent, a sponsor chief executive, his or her designee, or project staff to draft, review or testify regarding measures or to make representation to such legislative body, committee or member; or

(ii) In connection with an authorization or appropriations measure directly affecting the operation of the Foster Grandparent Program. Prohibitions on Electoral and Lobbying-Activities are fully set forth in 45 CFR part 1226.

(b) *Restrictions on State or local Government Employees.* If the sponsor is a State or local government agency which receives a grant from ACTION, certain restrictions contained in chapter 15 of title 5 of the United States Code are applicable. They are related to persons who are principally employed in activities associated with the project. The restrictions are not applicable to employees of educational or research institutions. An employee subject to these restrictions may not:

(1) Use his/her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office;

(2) Directly or indirectly coerce, attempt to coerce, command or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization agency, or person for political purposes; or

(3) Be a candidate for elective office, except in a nonpartisan election.

Nonpartisan election means an election at which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected.

(c) *Religious activities.* Foster Grandparents and project staff funded by ACTION shall not give religious instruction, conduct worship services or engage in any form of proselytization as part of their duties.

(d) *Nondiscrimination.* For purposes of this subpart, and for purposes of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000 d *et seq.*). Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Age Discrimination Act of 1975 (Pub. L. 94–135, title III; 42 U.S.C. 6101 *et seq.*), any program, project, or activity to which volunteers are assigned under this Act shall be deemed to be receiving Federal financial assistance.

(1) No person with responsibility in the operation of a project shall discriminate with respect to any activity or program because of race, creed, belief, color, national origin, sex, age, handicap, or political affiliation.

(2) Sponsors are required to take affirmative action to overcome the effects of prior discrimination. Even in the absence of prior discrimination, a sponsor may take affirmative action to overcome conditions which resulted in limiting participation.

(3) No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with a Foster Grandparent project.

(e) *Labor and Anti-Labor Activity.* No grant funds shall be directly or indirectly utilized to finance labor or anti-labor organization or related activity.

(f) *Nondisplacement of Employed Workers.* A Foster Grandparent may not perform any service or duty or engage in any activity which would otherwise be performed by an employed worker or which would supplant the hiring of employed workers.

(g) *Nonimpairment of Contracts.* A Foster Grandparent may not perform any service or duty or engage in any activity which impairs an existing contract for service. The term ''contract for service'' includes but is not limited to contracts, understandings, and arrangements, either written or oral, to provide professional, managerial, technical, or administrative service.

(h) *Noncompensation for Services.* No person, organization, or agency shall request or receive any compensation for services of Foster Grandparents.

(i) *Nepotism.* Persons selected for project staff positions may not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors, unless there is concurrence by the Advisory Council, with notification to ACTION.

(j) *Volunteer Separation.* A sponsor may separate a volunteer for cause, including, but not limited to, extensive or unauthorized absences, misconduct, inability to perform assignments or having income in excess of the eligibility level established by ACTION.

[48 FR 26809, June 10, 1983; 48 FR 44797, Sept. 30, 1983]

§ 1208.5–2 Legal representation.

Counsel may be employed and counsel fees, court costs, bail and other expenses incidental to the defense of a Foster Grandparent may be paid in a criminal, civil or administrative proceeding, when such a proceeding arises directly out of performance of the Foster Grandparent's activities. 45 CFR part 1220 establishes the circumstances under which ACTION may pay such expenses.

PART 1209—RETIRED SENIOR VOLUNTEER PROGRAM

Subpart A—General

Sec.

Subpart B—Project Development and Funding

AUTHORITY: Secs. 201, 212, 221, 222, 223, 402(14), 418 and 420 of Pub. L. 93–113, 83 Stat. 108, 87 Stat. 403, 404 and 414, 42 U.S.C. 5001, 5012, 5021, 5022, 5023, 5042(14), 5058 and 5060.

SOURCE: 48 FR 26815, June 10, 1983, unless otherwise noted.

Subpart A—General

§ 1209.1–1 Purpose of the program.

The Retired Senior Volunteer program (RSVP) is authorized under title II, part A, of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113). The purpose of the program is to provide a variety of opportunities for retired persons aged 60 or over to participate more fully in the life of their community through significant volunteer service.

§ 1209.1–2 Definitions.

Terms used in this part are defined as follows:

Act is the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113, 87 Stat. 394, 42 U.S.C. 4951).

Advisory Council is a group of persons formally organized by the project sponsor for the purpose of advising and supporting the sponsor in operating the project effectively.

Agency is the federal ACTION Agency.

Director is the Director of ACTION.

Handbook is the RSVP Operations Handbook No. 4405.92 which contains policies for implementing this regulation.

Handicapped is a person or persons having physical or mental impairments that substantially limit one or more major life activities.

Hard-to-reach individuals are those who are physically or socially isolated because of factors such as language, disability, or inadequate transportation.

Letter of Agreement is a written agreement between a volunteer station, the project sponsor, and the person served or the person legally responsible for the person served. The agreement authorizes assignment of an RSVP volunteer in the home of the person served, defines volunteer activities and specific arrangements for supervision.

Memorandum of Understanding is a statement prepared and signed by the administrator of a volunteer station and the RSVP director which identifies mutual responsibilities and working relationships.

OAVP refers to the Older American Volunteer Programs, which include: the Retired Senior Volunteer Program, the Foster Grandparent Program, and the Senior Companion Program.

Project is the locally planned and implemented Retired Senior Volunteer Program activity as agreed upon between ACTION and the sponsor.

Service Area is a geographically defined area in which volunteers are recruited, enrolled, and placed on assignments.

Sponsor is a public agency or private nonprofit organization which is responsible for the operation of the local RSVP project.

United States and States means the several states, the District of Columbia, the Virgin Islands, Puerto Rico, Guam, American Samoa, and the Trust Territories of the Pacific Islands.

Volunteer Station is a public or private non-profit organization, or a proprietary health care agency or organization that accepts responsibility for assignment and supervison of volunteers. Each volunteer station must be licensed or otherwise certified, when required, by appropriate state or local

government. Private homes are not volunteer stations.

[48 FR 26815, June 10, 1983; 48 FR 44797, 44798, Sept. 30, 1983]

§ 1209.1–3 Coordination.

The sponsor shall coordinate activities with project-related groups and individuals, including those representing government, industry, labor, volunteer organizations, programs for the aging, including State and Area Agencies on Aging, and other ACTION programs, to facilitate cooperation with existing or planned community services and to develop community support.

Subpart B—Project Development and Funding

§ 1209.2–1 Inquiries.

Inquiries regarding the Retired Senior Volunteer Program application process, program criteria, or the availability of funds, should be directed to the ACTION State Office serving the inquirer's own state. ACTION headquarters office in Washington, DC, will assist in directing inquiries to the appropriate state office.

§ 1209.2–2 Budget support.

(a) An RSVP sponsor is responsible for generating needed financial support for the RSVP project from all sources, federal and non-federal, including grants, cash and in-kind contributions, to meet budgeted costs of the project. The sponsor will supplement an ACTION grant with other support to the fullest extent possible and at least equal in amount to that negotiated between ACTION and the sponsor. The following percentages will be used as a guide by ACTION in negotiating the level of local support a sponsor will be required to contribute to the total project budget. In no event shall the required proportion of local support (including in-kind contributions) be more than 10% in the first year, 20% in the second year, 30% in the third year, 40% in the fourth year, and 50% in the fifth and succeeding years. The level of local support negotiated may be higher or lower than these percentages, as mutually agreed to by ACTION and the sponsor, and as justified by local conditions. Sponsors proposing to contribute local support of less than 30% of the total project budget for the third or succeeding years must provide ACTION with an acceptable written justification for the lower level of support.

(b) The total of Volunteer Expenses for Senior Volunteers, including insurance, transportation, meals, and recognition activities, shall be an amount equal to at least 25% of the amount of the ACTION grant award. Federal and non-Federal resources may be used to make up this sum.

Exceptions to this requirement may be requested of the Director, Older American Volunteer Programs, through the ACTION State Director by an RSVP Sponsor who can clearly demonstrate that (1) this requirement will result in undue hardship in the conduct of project operation, and (2) a lesser amount will meet the volunteer expense needs of the number of volunteers budgeted.

§ 1209.2–3 Sponsor eligibility and solicitation of proposals.

(a) *Sponsor eligibility*. ACTION will award grants only to public agencies and private non-profit organizations in the United States which have the authority to accept and the capability to administer such grants.

(b) *Solicitation of proposals.* (1) Any eligible organization may file an application for a grant. Applicants may also be solicited by ACTION pursuant to its objective of achieving equitable program resource distribution. Solicited applications are not assured of selection or approval and may have to compete with other solicited or unsolicited applications.

(2) The Director may not award any grant or contract for a project in any state to any agency or organization unless, if such state has a state agency established or designated pursuant to Section 305(a)(1) of the Older Americans Act of 1965, as amended (42 U.S.C. 3025(a)(1)), such agency itself is the recipient of the award, or such agency has been afforded at least 45 days in which to review and make recommendations on new grant applications.

§ 1209.2–4 Project proposals.

(a) Applicants shall use standard forms prescribed by ACTION. ACTION State Offices will provide applicants with guidance and any additional instructions necessary to plan and budget proposed program activities.

(b) Agencies and organizations submitting grant applications must comply with the provisions of Executive Order 12372, the ''Intergovernmental Review of Federal Programs and Activities,'' as set forth in 45 CFR part 1232.

(c) A potential sponsor must submit one copy of an application for a new RSVP project to the State Agency on Aging, which has 45 days to review the application and make recommendations. The State Agency on Aging shall state in writing to ACTION its recommendations and reasons within this time period or will be considered to have waived its rights under this part.

§ 1209.2–5 Review of project proposals.

(a) The ACTION State Office for the applicant's state will review the grant application to ensure that program requirements are complied with and that required documentation has been attached.

(b) If not approved, the application will be returned to the applicant with an explanation of ACTION's decision. The unsuccessful applicant may reapply when the inadequacy, if any, found in the application is resolved.

§ 1209.2–6 Awards.

(a) ACTION will, within funds available, award a grant in writing to those applicants whose grant proposals provide the best potential for serving the purpose of the program. The award will be documented by *Notice of Grant Award* (NGA).

(b) The parties to the NGA are ACTION and the sponsoring organization. The NGA will document the sponsor's commitment to fulfill specific programmatic objectives and financial obligations. It will document the extent of ACTION's obligation to provide financial support to the sponsor.

(c) A sponsor may receive a grant award for more than one OAVP project.

§ 1209.2–7 Grant management.

(a) Sponsors shall manage grants awarded to them in accordance with provisions of these regulations; ACTION Handbook No. 2650.2, *Grants Management Handbook for Grantees,* and ACTION Handbook No. 4405.92, *RSVP Operations Handbook.* A copy of each document will be furnished to the sponsor at the time the initial grant is awarded.

(b) Project support provided under an ACTION grant shall be furnished at the lowest possible cost consistent with the effective operation of the project.

(c) Project costs for which ACTION funds are budgeted must be justified as being essential to project operation.

§ 1209.2–8 Suspension, termination and denial of refunding.

Grant suspension, termination and denial of refunding procedures are set forth in 45 CFR part 1206, chapter XII, and in ACTION Handbook 2650.2.

Subpart C—Project Operations

§ 1209.3–1 Sponsor responsibility.

The sponsor is responsible for all programmatic and fiscal aspects of the project and may not delegate or contract this responsibility to another entity. The sponsor has the responsibility to:

(a) Employ, supervise, and support a project director, who will be directly responsible to the sponsor for the management of the project, including selection, training and supervision of project staff;

(b) Provide for the recruitment, assignment, supervision and support of volunteers. Special efforts are to be made toward recruitment and assignment of older persons from minority groups, handicapped and hard-to-reach individuals, and groups in the community which are under-represented in the project. The sponsor will stress the recruitment and enrollment of persons not already volunteering:

(c) Provide financial and in-kind support to fulfill the project's local support commitment;

(d) Establish, orient and support an independent RSVP Advisory Council;

(e) Provide the volunteers with not less than the minimum accident, personal liability, and excess auto liability insurance required by ACTION;

(f) Provide for appropriate recognition of the volunteers and their activities;

(g) Establish personnel practices, including provision of position descriptions for project staff and grievance and appeal procedures for both volunteers and project staff;

(h) Ensure compliance with ACTION requirements relating to nondiscrimination, religious activity, political activity, lobbying, patronage toward persons related by blood or marriage, labor and anti-labor organization or related activities, nondisplacement of employed workers, nonimpairment of contracts, and noncompensation for services;

(i) Maintain project records in accordance with generally accepted accounting practices and provide for accurate and timely preparation and submission of reports required by ACTION;

(j) Develop volunteer service opportunities through volunteer stations;

(k) Negotiate, prior to placement of volunteers, a written Memorandum of Understanding with each volunteer station, identifying sponsor responsibilities, volunteer station responsibilities, and joint responsibilities;

(l) Orient volunteer station staff to RSVP and its activities;

(m) Provide pre-service orientation to the volunteers on RSVP goals and activities;

(n) Arrange for in-service training of the volunteers by volunteer stations or other sources of training as needed;

(o) Provide or arrange for volunteer benefits in a timely manner;

(p) Ensure provision for volunteer safety;

(q) Comply with program regulations, policies and procedures prescribed by ACTION;

(r) Ensure that appropriate liability insurance is maintained for owned, non-owned, or hired vehicles used in the project; and

(s) Develop a realistic transportation plan for the project based on the lowest cost transportation modes.

[48 FR 26815, June 10, 1983; 48 FR 44798, Sept. 30, 1983]

§ 1209.3–2 Project staff.

(a) Project staff are employees of the sponsor and subject to its personnel policies and practices.

(b) ACTION must concur in writing with the sponsor's selection of a project director before such person is employed or earns pay from grant funds.

(c) A project director shall serve full-time and may not be employed or serve concurrently in another capacity, paid or unpaid, during established working hours, without prior approval from ACTION. This does not preclude participation of the project director in activities of related local agencies, boards or organizations for the purposes of coordination and facilitating achievement of project goals and objectives.

(d) Compensation levels of the project staff, including wages, salaries and fringe benefits, should be comparable to like or similar positions in the sponsor organization and in the community.

§ 1209.3–3 RSVP Advisory Council.

An Advisory Council shall be established to advise and assist the project sponsor and staff. There shall be a separate Advisory Council for each Older American Volunteer Program administered by the sponsor. When a small number of volunteers is enrolled or other special conditions prevail, this requirement may be waived by the Director of OAVP. The Advisory Council shall:

(a) Advise the project director in the formulation of local policy, planning, and the development of operational procedures and practices consistent with program policies;

(b) Assist the sponsor by promoting community support for the project, advise on personnel actions affecting volunteers and project staff, and assist in developing local financial and in-kind resources;

(c) Include in its membership, when available; community business and labor leaders, representatives from volunteer stations, public and private agencies, and persons specializing in the fields of aging or voluntarism. In addition at least one-fourth of the Advisory Council shall be persons aged 60 or over. This group must include RSVP

volunteers as voting members. The sponsor's chief executive or designee, one member of its governing board, and the project director should be members of the Advisory Council but may not be officers of the Advisory Council. The sponsor's chief executive and the project director may not be voting members. The member representing the sponsor's governing board may be a voting member. The provisions of § 1209.5–1(c). Nondiscrimination, apply to the Advisory Council;

(d) Meet on a regular schedule and establish its own procedures, including election of officers and terms of office;

(e) Conduct an annual appraisal of project operation and submit a report to the sponsor, which shall be attached to the continuation grant application;

(f) Have an opportunity to advise the sponsor in advance on the selection or termination of the project director; and

(g) Ensure procedures are in effect to hear an appeal to actions affecting a volunteer adversely.

§ 1209.3–4 Volunteer station responsibility.

(a) Normally the volunteer station is an organization other than the sponsoring organization. The sponsor may function as a volunteer station, provided that not more than 5% of the total number of volunteers budgeted for the project are assigned to it. This limitation does not apply to the assignment of volunteers to other programs administered by the sponsor. Also, the RSVP project itself may function as a volunteer station or may initiate special volunteer activities which temporarily function at that location, provided ACTION agrees that these activities are in accord with program objectives and will not hinder overall project operation.

(b) Volunteer stations at which volunteers serve will be in the community where such persons live or in nearby communities. Volunteer services will be performed either on publicly owned and operated facilities or projects, or on local projects sponsored by private nonprofit organizations (other than political parties), other than projects involving construction, operation, or so much of any facility used or to be used for sectarian instruction or as a place of religious worship.

(c) Volunteer station responsibilities include: (1) Assisting with or arranging for volunteer transportation and meals, and assisting in the provision of appropriate volunteer recognition:

(2) Developing and monitoring volunteer assignments, assigning, supervising and training volunteers and providing them with preservice orientation and in-service training;

(3) Providing for volunteer safety;

(4) Keeping records and preparing reports required by sponsor;

(5) Signing, prior to placement of volunteers, a Memorandum of Understanding with the sponsor establishing working relationships and mutual responsibilities, and detailing responsibilities outlined above as well as other agreed-upon responsibilities. The Memorandum of Understanding is to be reviewed and, as appropriate, changed annually. The Memorandum may be amended at any time by mutual agreement and must be signed and dated annually to indicate that review and update, if needed, have been accomplished.

§ 1209.3–5 RSVP volunteers.

(a) *Eligibility*. (1) To be eligible for enrollment as an RSVP volunteer, a person must be 60 years of age or over, retired, willing to serve on a regular basis, and willing to accept instruction and supervision as required.

(2) Eligibility to be an RSVP volunteer may not be restricted on the basis of education, income, experience, citizenship, race, color, creed, belief, sex, national origin, political affiliation, or handicap.

(b) *Volunteer expenses.* (1) Within the limits of a project's approved budget and in accordance with provisions of the RSVP Operations Handbook, volunteers will be provided transportation or will receive assistance with costs of transportation, recognition activities, and, when possible, meals. Project funds may not be used to reimburse volunteers for volunteer expenses, including transportation costs, incurred while performing their volunteer assignments. Provision shall be made by the sponsor to obtain ACTION specified minimum levels of accident insurance, personal liability insurance and, when

appropriate, excess automobile liability insurance.

(i) *Accident insurance:* Accident insurance shall cover RSVP volunteers for personal injury during travel between their homes and places of assignment, during their volunteer service, during meal periods while serving as a volunteer, and while attending project-sponsored activities, such as recognition activities, orientation and Advisory Council meetings. Protection shall be provided against claims in excess of any benefits or services for medical care or treatment available to the volunteer from other sources, including:

(A) Health insurance coverage;

(B) Other hospital or medical service plans;

(C) Any coverage under labor-management trusteed plans, union welfare plans, employer organization plans, or employee benefit organization plans; and

(D) Coverage under any governmental programs, or provided by any statute. When benefits are approved in the form of services rather than by cash payments, the reasonable cash value of each service rendered shall be considered in determining the applicability of this provision. The benefits payable under a plan shall include the benefits that would have been payable had a claim been duly made therefor. The benefits payable shall be reduced to the extent necessary so that the sum of such reduced benefits and all the benefits provided for by any other plan shall not exceed the total expenses incurred by the volunteer.

(ii) *Personal Liability Insurance:* Protection shall be provided against claims in excess of protection provided by other insurance.

(iii) *Excess Automobile Liability Insurance:* Protection shall be provided against claims in excess of the greater of either:

(A) Liability insurance volunteers carry on their own automobiles, or

(B) The limits of applicable state financial responsibility law, or

(C) In the absence of a state financial responsibility law, levels of protection to be determined by ACTION for each person, each accident, and for property damage.

Volunteers who drive their personal vehicles to or on assignments or project-related activities, must maintain personal automobile liability insurance equal to or exceeding the levels established by paragraphs (b)(1)(iii)(B) and (C) of this section.

§ 1209.3–6 Volunteer assignments.

(a) A variety of assignnments shall be developed prior to the recruitment of RSVP volunteers. Assignments shall include opportunities to respond to significant community needs.

(b) Assignments shall be matched to the interests, abilities, preferences and availability of volunteers. Special consideration shall be given to developing assignments that allow for the limited physical strength and mobility of the handicapped older volunteer.

§ 1209.3–7 Service area.

The service area of a project identified in the approved grant application may not be redefined without prior written approval from ACTION.

Subpart D—Non-ACTION Funded RSVP Projects

§ 1209.4–1 Memorandum of agreement.

(a) If an eligible agency or organization wishes to sponsor an RSVP project without ACTION funding, and wishes to receive technical assistance and materials from ACTION, it must sign a Memorandum of Agreement with ACTION identifying mutual responsibilities and certifying its intent to comply with ACTION regulations.

(b) A non-ACTION funded project sponsor's noncompliance with the Memorandum of Agreement may result in suspension or termination of ACTION's technical assistance to the project.

(c) Entry into a Memorandum of Agreement with a sponsoring agency which does not receive ACTION funds will not, under any circumstances, create a financial obligation on the part of ACTION for costs associated with the project.

Subpart E—Sanctions

§ 1209.5–1 Special limitations.

(a) *Political activities.* (1) No part of any grant shall be used to finance, directly or indirectly, any activity to influence the outcome of any election to public office, or any voter registration activity.

(2) No project shall be conducted in a manner involving the use of funds, the provision of services, or the employment or assignment of personnel in a manner supporting or resulting in the identification of such project with (i) any partisan or nonpartisan political activity associated with a candidate, or contending faction or group, in an election, or (ii) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election, or (iii) any voter registration activity.

(3) No RSVP volunteer or employee of a sponsor or volunteer station may take any action, when serving in such capacity, with respect to a partisan or nonpartisan political activity that would result in the identification or apparent identification of the Retired Senior Volunteer Program with such activity.

(4) No grant funds may be used by the sponsor in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except:

(i) In any case in which a legislative body, a committee of a legislative body, or a member of a legislative body requests an RSVP volunteer, a sponsor chief executive, his or her designee, or project staff to draft, review or testify regarding measures or to make representation to such legislative body, committee or member, or

(ii) In connection with an authorization or appropriation measure directly affecting the operation of the Retired Senior Volunteer Program.

(5) Prohibitions on Electoral and Lobbying Activities are fully set forth in 45 CFR part 1226.

(b) *Restrictions on State or Local Government Employees.* If the sponsor is a State or local government agency which received a grant from ACTION, certain restrictions contained in Chapter 15 of Title 5 of the United States Code are applicable to persons who are principally employed in activities associated with the project. The restrictions are not applicable to employees of educational or research institutions. An employee subject to these restrictions may not:

(1) Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office; or

(2) Directly or indirectly coerce, attempt to coerce, command or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; or

(3) Be a candidate for elective office, except in a nonpartisan election. ''Nonpartisan election'' means an election at which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected.

(c) *Religious activities.* RSVP volunteers and project staff funded by ACTION shall not give religious instruction, conduct worship services or engage in any form of proselytization as part of their duties.

(d) *Nondiscrimination.* For purposes of this subpart, and for purposes of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Age Discrimination Act of 1975 (Pub. L. 94–135, Title III; 42 U.S.C. 6101 *et seq.*), any project or activity to which volunteers are assigned shall be deemed to be receiving federal financial assistance.

(1) No person with responsibility in the operation of a project shall discriminate with respect to any activity or program because of race, creed. belief, color, national origin, sex, age, handicap, or political affiliation.

(2) Sponsors are required to take affirmative action to overcome the effects of prior discrimination. Even in the absence of prior discrimination, a sponsor may take affirmative action to overcome conditions which resulted in limiting participation.

(3) No person in the United States shall, on the ground of sex, be excluded

from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any project.

(e) *Labor or Anti-Labor Activity.* No grant funds shall be directly or indirectly utilized to finance labor or anti-labor organization or related activity.

(f) *Nondisplacement of Employed Workers.* An RSVP volunteer may not perform any service or duty or engage in any activity which would otherwise be performed by an employed worker or which would supplant the hiring of employed workers.

(g) *Nonimpairment of Contracts.* An RSVP volunteer may not perform any service or duty, or engage in any activity which impairs an existing contract for service. The term ''contract for service'' includes but is not limited to contracts, understandings and arrangements, either written or oral, to provide professional, managerial, technical, or administrative service.

(h) *Noncompensation for Services.* No person, organization, or agency shall request or receive any compensation for services of RSVP voluneers.

(i) *Volunteer Status.* RSVP volunteer service shall not be deemed employment for any purpose.

(j) *Nepotism.* Persons selected for project staff positions may not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors, unless there is concurrence by the Advisory Council, with notification to ACTION.

(k) *Volunteer Separation.* A volunteer may be separated from the program for cause, including, but not limited to, extensive absences, misconduct, or inability to perform assignments.

§ 1209.5–2 Legal representation.

Counsel may be employed and counsel fees, court costs, bail, and other expenses incidental to the defense of a Senior Volunteer may be paid in a criminal, civil or administrative proceeding, when such a proceeding arises directly out of performance of the RSVP volunteer's activities. 45 CFR part 1220 establishes the circumstances under which ACTION may pay such expenses.

PART 1210—VISTA TRAINEE DESELECTION AND VOLUNTEER EARLY TERMINATION PROCEDURES

Subpart A—General

Subpart B—VISTA Trainee Deselection

Subpart C—VISTA Volunteer Early Termination

Subpart D—National Grant Trainees and Volunteers

AUTHORITY: Secs. 103(c), 402(14), Pub. L. 93–113, 87 Stat. 397 and 407.

SOURCE: 46 FR 35512, July 9, 1981, unless otherwise noted.

Subpart A—General

§ 1210.1–1 Purpose.

This part establishes procedures under which certain Trainees and Volunteers serving in ACTION programs under Pub. L. 93–113 will be deselected from training or termininated from service and how they may appeal their deselection or termination.

§ 1210.1–2 Scope.

(a) This part applies to all Trainees and Volunteers enrolled under part A of Title I of the Domestic Volunteer Service Act of 1973, Pub. L. 93–113, as

amended, (42 U.S.C. 4951 *et seq.,)* (hereinafter the ''Act'') and full-time Volunteers serving under part C of title I of the Act.

(b) This part does not apply to the medical separation of any Trainee or Volunteer. Separate procedures, as detailed in the VISTA Handbook, are applicable for such separations.

§ 1210.1–3 Definitions.

(a) *Trainee* means a person enrolled in a program under part A of Title I of the Act or for full-time volunteer service under part C of Title I of the Act who has reported to training but has not yet completed training and been assigned to a project.

(b) *Volunteer* means a person enrolled and currently assigned to a project as a full-time Volunteer under part A of title I of the Act, or under part C of title I of the Act.

(c) *Sponsor* means a public or private nonprofit agency to which ACTION has assigned Volunteers.

(d) *Hearing Examiner* or *Examiner* means a person having the qualifications described in Appendix A who has been appointed to conduct an inquiry with respect to a termination.

(e) *National Grant Program* means a program operated under part A, title I of the Act in which ACTION has awarded a grant to provide the direct costs of supporting VISTA Volunteers on a national or multi-regional basis. VISTA Volunteers may be assigned to local offices or project affiliates. The national grantee provides overall training, technical assistance and management support for project operations.

(f) *Local component* means a local office or project affiliate of a national grantee to which VISTA Volunteers are assigned under the VISTA National Grants Program.

(g) *Termination* means the removal of a Volunteer from VISTA service by ACTION, and does not refer to removal of a Volunteer from a particular project which has been requested by a sponsor or Governor under § 1210.3–2.

(h) *Deselection* means the removal of a Trainee from VISTA service by ACTION.

Subpart B—VISTA Trainee Deselection

§ 1210.2–1 Grounds for deselection.

ACTION may deselect a Trainee out of a training program for any of the following reasons:

(a) Failure to meet training selection standards which includes, but is not limited to, the following conduct:

(1) Inability or refusal to perform training assignments;

(2) Disruptive conduct during training sessions;

(b) Conviction of any criminal offense under Federal, State or local statute or ordinance;

(c) Violation of any provision of the Domestic Volunteer Service Act of 1973, as amended, or any ACTION policy, regulation, or instruction;

(d) Intentional false statement, omission, fraud, or deception in obtaining selection as a Volunteer; or

(e) Refusal to accept Volunteer Placement.

§ 1210.2–2 Procedure for deselection.

(a) The Regional Director or designee shall notify the Trainee in writing that ACTION intends to deselect the Trainee. The notice must contain the reasons for the deselection and indicate that the Trainee has 5 days to appeal.

(b) The Trainee is placed on Administrative Hold at the time of the notice of deselection.

(c) The Trainee has 5 days after receipt of the notice to appeal in writing to the Regional Director, or designee specified in the notice, furnishing any supportive documentation. In the appeal letter, the Trainee may request an opportunity to present his or her case in person.

(d) If the Trainee does not respond to the notice, deselection becomes effective at the expiration of the Trainee's time to appeal.

(e) Within 5 days after receiving the Trainee's appeal, if no personal presentation is requested, the Regional Director or designee must issue a decision. If a personal presentation is requested, the Regional Director or designee must schedule it within 5 days, and must issue a decision 5 days after such presentation. In either case, the decision of

the Regional Director or designee is final.

Subpart C—VISTA Volunteer Early Termination

§ 1210.3–1 Grounds for termination.

ACTION may terminate or suspend a Volunteer based on the Volunteer's conduct for the following reasons:

(a) Conviction of any criminal offense under Federal, State, or local statute or ordinance;

(b) Violation of any provision of the Domestic Volunteer Service Act of 1973, as amended, or any ACTION policy, regulation, or instruction;

(c) Failure refusal or inability to perform prescribed project duties as outlined in the Project Narrative and/or volunteer assignment description and as directed by the sponsoring organization to which the Volunteer is assigned;

(d) Involvement in activities which substantially interfere with the Volunteer's performance of project duties;

(e) Intentional false statement, omission, fraud, or deception in obtaining selection as a Volunteer;

(f) Any conduct on the part of the Volunteer which substantially diminishes his or her effectiveness as a VISTA Volunteer; or

(g) Unsatisfactory performance of Volunteer assignment.

§ 1210.3–2 Removal from project.

(a) Removal of a Volunteer from the project assignment may be requested and obtained by a written request supported by a statement of reason by:

(1) The Governor or chief executive officer of the State or similar jurisdiction in which the Volunteer is assigned or,

(2) The sponsoring organization. The sole responsibility for terminating or transferring a Volunteer rests with the ACTION Agency.

(b) A request for removal of a Volunteer must be submitted to the ACTION State Director, who will in turn notify the Volunteer of the request. The State Director, after discussions with the Volunteer and in consultation with the Regional Director, if necessary, has 15 days to attempt to resolve the situation with the sponsor or the Governor's office. If the situation is not resolved at the end of the 15 day period, the Volunteer will be removed from the project and placed on Administrative Hold, pending a decision as set forth in paragraph (c) of this section.

(c) The State office will take one of the following actions concerning a Volunteer who has been removed from a project assignment:

(1) Accept the Volunteer's resignation;

(2) If removal was requested for reasons other than those listed in § 1210.3–1, ACTION will attempt to place the Volunteer on another project. If reassignment is not possible, the Volunteer will be terminated for lack of suitable assignment, and he or she will be given special consideration for reinstatement; or

(3) If removal from the project is approved based on any of the grounds for early termination as set forth in § 1210.3–1, the Volunteer may appeal the termination grounds as detailed in subpart C of this part to establish whether such termination is supported by sufficient evidence. If ACTION determines that the removal based on grounds detailed in § 1210.3–1 is not established by adequate evidence, then the procedures outlined in § 1210.3–2(c)(2) will be followed.

(d) A Volunteer's removal during a term of service may also occur as a result of either the termination of, or refusal to renew, the Memorandum of Agreement between ACTION and the sponsoring organization, or the termination or completion of the initial Volunteer assignment. In such cases, the Volunteer will be placed in Administrative Hold status while the Regional Office attempts to reassign the Volunteer to another project. If no appropriate reassignment within the Region is found within the Administrative Hold period, the Volunteer will be terminated but will receive special consideration for reinstatement as soon as an appropriate assignment becomes available. If appropriate reassignment is offered the Volunteer and declined, ACTION has no obligation to offer additional or alternative assignments.

§ 1210.3–3 Suspension.

(a) The ACTION State Director may suspend a Volunteer for up to 30 days in order to determine whether sufficient evidence exists to start termination proceedings against the Volunteer. Suspension is not warranted if the State Director determines that sufficient grounds already exist for the initiation of termination. In that event, the termination procedures contained in § 1210.3–4 will be followed.

(b) Notice of suspension may be written or verbal and is effective upon delivery to the Volunteer. Within 3 days after initiation of the suspension, the Volunteer will receive a written notice of suspension setting forth in specific detail the reason for the suspension. During the suspension period the Volunteer may not engage in project activities, but will continue to receive all allowances, including stipend.

(c) At the end of the suspension period, the Volunteer must either be reassigned to a project, or termination proceedings must be initiated.

§ 1210.3–4 Initiation of termination.

(a) *Opportunity for Resignation.* In instances where ACTION has reason to believe that a Volunteer is subject to termination for any of the grounds cited in § 1210.3–1, an ACTION staff member will discuss the matter with the Volunteer. If, after the discussion, the staff member believes that grounds for termination exist, the Volunteer will be given an opportunity to resign. If the Volunteer chooses not to resign, the administrative procedures outlined below will be followed.

(b) *Notification of Proposed Termination.* The Volunteer will be notified, in writing by certified mail, of ACTION's intent to terminate him or her by the ACTION State Director at least 15 days in advance of the proposed termination date. The letter must give the reasons for termination, and notify the Volunteer that he or she has 10 days within which to answer in writing and to furnish any affidavits or written material. This answer must be submitted to the ACTION State Director or a designee identified in the notice of proposed termination.

(c) *Review and Notice of Decision.* (1) Within 5 working days after the date of receipt of the Volunteer's answer, the State Director or designee will send a written Notice of Decision to the Volunteer by certified mail. (If no answer is received from the Volunteer within the time specified, the State Director or designee will send such notice within 5 days after the expiration of the Volunteer's time to answer.)

(2) If the decision is to terminate the Volunteer, the Notice will set forth the reasons for the decision, the effective date of termination (which, if the Volunteer has filed an answer, may not be earlier than 10 days after the date of the Notice of Decision), and the fact that the Volunteer has 10 days in which to submit a written appeal to the Regional Director.

(3) A Volunteer who has not filed an answer pursuant to the procedures outlined above is not entitled to appeal the decision or request a hearing and may be terminated on the date of the Notice.

(d) *Allowances and Project Activities.* (1) A Volunteer who files an answer within the 10 days allowed by § 1210.3–4(b) with the State Director or designee following receipt of the notice of proposed termination, will be placed in Administrative Hold status, and may continue to receive regular allowances, but no stipend, in accordance with ACTION policy, until the appeal is finally decided. The Volunteer may not engage in any project related activities during this time.

(2) If the proposed termination is reversed, the Volunteer's stipend and any other allowances lost during the period of review will be reinstated retroactively.

§ 1210.3–5 Preparation for appeal.

(a) *Entitlement to Representation.* A Volunteer may be accompanied, represented and advised by a representative of the Volunteer's own choice at any stage of the appeal. A person chosen by the Volunteer must be willing to act as representative and not be disqualified because of conflict of position.

(b) *Time for Preparation and Presentation.* (1) A Volunteer's representative, if a Volunteer or an employee of ACTION, must be given a reasonable

amount of time off from assignment to present the appeal.

(2) ACTION will not pay travel expenses or per diem travel allowances for either a Volunteer or the Volunteer's representative in connection with the preparation of the appeal, except to attend the hearing as provided in § 1210.3–7(c)(5).

(c) *Access to Agency Records.* (1) A Volunteer is entitled to review any material in his or her official Volunteer folder and any relevant Agency documents to the extent permitted by the Privacy Act and the Freedom of Information Act, (5 U.S.C. 552a; 5 U.S.C. 552). Examples of documents which may be withheld from Volunteers include references obtained under a pledge of confidentiality, official Volunteer folders of other Volunteers and privileged intra-Agency memoranda.

(2) A Volunteer may review relevant documents in the possession of a sponsor to the same extent ACTION would be entitled to review them.

§ 1210.3–6 Appeal of termination.

(a) *Appeal to Regional Director.* A Volunteer has 10 days from the Notice of Decision issued by the State Director or designee in which to appeal to the Regional Director. The appeal must be in writing and specify the reasons for the Volunteer's disagreement with the decision. The Regional Director has 10 days in which to render a written decision on the Volunteer's appeal, indicating the reason for the decision. In notifying the Volunteer of the decision, the Regional Director must also inform the Volunteer of his or her opportunity to request the appointment of a Hearing Examiner and the procedure to be followed.

(b) *Referral to Hearing Examiner.* If the Volunteer is dissatisfied with the decision of the Regional Director, the Volunteer has 5 days in which to request the appointment of a Hearing Examiner. The Regional Director must act on that request within 5 days. The Hearing Examiner must possess the qualifications specified in Appendix A to this part, and may not be an employee of ACTION unless his or her principal duties are those of Hearing Examiner.

§ 1210.3–7 Inquiry by Hearing Examiner.

(a) *Scope of Inquiry.* (1) The Examiner shall conduct an inquiry of a nature and scope appropriate to the issues involved in the termination. If the Examiner determines that the termination involves relevant disputed issues of fact, the Examiner must hold a hearing unless it is waived by the Volunteer. If the Examiner determines that the termination does not involve relevant disputed issues of facts, the Examiner need not hold a hearing, but must provide the parties an opportunity for oral presentation of their respective positions. At the Examiner's discretion, the inquiry may include:

(i) The securing of documentary evidence;

(ii) Personal interviews, including telephone interviews;

(iii) Group meetings; or

(iv) Affidavits, written interrogatories or depositions.

(2) The Examiner's inquiry shall commence within 7 days after referral by the Regional Director. The Examiner shall issue a report as soon as possible, but within 30 days after referral, except when a hearing is held. If hearing is held, the Examiner shall issue a report within 45 days after the referral.

(b) *Conduct of Hearing.* If a hearing is held, the conduct of the hearing and production of witnesses shall conform with the following requirements:

(1) The hearing shall be held at a time and place determined by the Examiner who shall consider the convenience of parties and witnesses and expense to the Government in making the decision.

(2) Ordinarily, attendance at the hearing will be limited to persons determined by the Examiner to have a direct connection with it. If requested by the Volunteer, the Examiner must open the hearing to the public.

(3) The hearing shall be conducted so as to bring out pertinent facts, including the production of pertinent records.

(4) Rules of evidence shall not be applied strictly, but the Examiner may exclude irrelevant or unduly repetitious testimony or evidence.

(5) Decisions on the admissibility of evidence or testimony shall be made by the Examiner.

(6) Testimony shall be under oath or affirmation, administered by the Examiner.

(7) The Examiner shall give the parties an opportunity to present oral and written testimony that is relevant and material, and to cross-examine witnesses who appear to testify.

(8) The Examiner may exclude any person from the hearing for conduct that obstructs the hearing.

(c) *Witnesses.* (1) All parties are entitled to produce witnesses.

(2) Volunteers, employees of a sponsor, and employees of ACTION shall be made available as witnesses when requested by the Examiner. The Examiner may request witnesses on his or her own initiative. Parties shall furnish to the Examiner and to opposing parties a list of proposed witnesses, and an explanation of what the testimony of each is expected to show, at least 10 days before the date of the hearing. The Examiner may waive the time limit in appropriate circumstances.

(3) Employees of ACTION shall remain in a duty status during the time they are made available as witnesses.

(4) Volunteers, employees and any other persons who serve as witnesses shall be free from coercion, discrimination, or reprisal for presenting their testimony.

(5) The Examiner must authorize payment of travel expense and per diem at standard Government rates for the Volunteer and a representative to attend the hearing.

(6) The Examiner may authorize payment of travel expense and per diem at standard Government rates for other necessary witnesses to attend the hearing if he or she determines that the required testimony cannot be satisfactorily obtained by affidavit, written interrogatories or deposition at less cost.

(d) *Report of Hearing.* (1) The Examiner shall determine how any hearing shall be reported and shall have either a verbatim transcript or written summary of the hearing prepared, which shall include all pertinent documents and exhibits submitted and accepted. If the hearing is reported verbatim, the Examiner shall make the transcript a part of the record of the proceedings.

(2) If the hearing is not reported verbatim, a suitable summary of pertinent portions of the testimony shall be made part of the record of proceedings. When agreed to in writing, the summary constitutes the report of the hearing. If the Examiner and the parties fail to agree on the hearing summary, the parties are entitled to submit written exceptions to any part of the summary, and these written exceptions and the summary will constitute the report of the hearing and shall be made part of the record of proceedings.

(3) The Volunteer may make a recording of the hearing at the Volunteer's own expense if no verbatim transcript is made.

§ 1210.3–8 Termination file and Examiner's report.

(a) *Preparation and Content.* The Examiner shall establish a termination file containing documents related to the termination, including statements of witnesses, records or copies thereof, and the report of the hearing when a hearing was held. The Examiner shall also prepare a report of findings and recommendations which shall be made part of the termination file.

(b) *Review by Volunteer.* On completion of the termination file, the Examiner shall make it available to the Volunteer and representative for review and comment before submission to the Director of VISTA. Any comments by the Volunteer or representative should be submitted to the Hearing Examiner for inclusion in the termination file not later than 5 days after the file is made available to them. The comments should identify those parts of the Examiner's report which support the appeal.

(c) *Submission of termination file.* Immediately upon receiving the comments from the Volunteer the Hearing Examiner shall submit the termination file to the Director of VISTA.

§ 1210.3–9 Decision by Director of VISTA.

The Director of VISTA shall issue a written decision, including a statement of the basis for the decision, within 10 days after receipt of the termination file. The decision of the Director of VISTA is the final Agency decision.

§1210.3–10 Reinstatement of Volunteer.

(a) If the Regional Director or Director of VISTA reinstates the Volunteer, the Regional Director may at his or her discretion reassign the Volunteer to the Volunteer's previous project or to another project. The Regional Director, in making such a decision, must request the Volunteer's views, but has the final decision on the Volunteer's placement.

(b) If the Volunteer's termination is reversed, stipend and other allowances lost during the appeal period will be paid retroactively.

§1210.3–11 Disposition of termination and appeal files.

All termination and appeal files shall be forwarded to the Director of VISTA after a final decision has been made and are subject to the provisions of the Privacy Act and Freedom of Information Act. No part of any successful termination appeal may be made part of, or included in, a Volunteer's official folder.

Subpart D—National Grant Trainees and Volunteers

§1210.4 Early termination procedures for National Grant Trainees and Volunteers.

Trainees and Volunteers serving in the National Grant Program as defined in §1210.1–3(e) will be subject to the same termination procedure as standard VISTA Trainees and Volunteers with the following exceptions:

(a) For Trainees, the deselection procedure, [See §1210.2–2] will be handled by the Project Manager in ACTION/Headquarters.

(b) The Initiation of termination, [See §1210.3–4 (a) and (b)] will be handled by the VISTA Project Manager in ACTION/Headquarters, with the concurrence of the appropriate State Director. The Review and Notice of Decision, [See §1210.3–4(c)] will be handled by the VISTA Project Manager in ACTION/Headquarters.

(c) The Appeal of termination, [See §1210.3–6(a)] will be handled by the Chief of VISTA Branch and not the Regional Director.

(d) The final decision on a Volunteer appeal will be made by the Director of VISTA as provided in §1210.3.

APPENDIX A TO PART 1210—STANDARD FOR EXAMINERS

(a) An Examiner must meet the requirements specified in either paragraph (1), (2), (3), or (4) of this appendix:

(1)(a) Current employment in Grades GS–12 or equivalent, or above;

(b) Satisfactory completion of a specialized course of training prescribed by the Office of Personnel Management for Examiners;

(c) At least four years of progressively responsible experience in administrative, managerial, professional, investigative, or technical work which has demonstrated the possession of:

(i) The personal attributes essential to the effective performance of the duties of an Examiner, including integrity, discretion, reliability, objectivity, impartiality, resourcefulness, and emotional stability.

(ii) A high degree of ability to:

—Identify and select appropriate sources of information; collect, organize, analyze and evaluate information; and arrive at sound conclusions on the basis of that information;

—Analyze situations; make an objective and logical determination of the pertinent facts; evaluate the facts; and develop practical recommendations or decisions on the basis of facts;

—Recognize the causes of complex problems and apply mature judgment in assessing the practical implications of alternative solutions to those problems;

—Interpret and apply regulations and other complex written material;

—Communicate effectively orally and in writing, including the ability to prepare clear and concise written reports; and

—Deal effectively with individuals and groups, including the ability to gain the cooperation and confidence of others.

(iii) A good working knowledge of:

—The relationship between Volunteer administration and overall management concerns; and

—The principles, systems, methods and administrative machinery for accomplishing the work of an organization.

(2) Designation as an arbitrator on a panel of arbitrators maintained by either the Federal Mediation and Conciliation Service or the American Arbitration Association.

(3) Current or former employment as, or current eligibility on the Office of Personnel Management's register for Hearing Examiner, GS–935–0.

(4) Membership in good standing in the National Academy of Arbitrators.

(b) A former Federal employee who, at the time of leaving the Federal service, was in Grade GS–12 or equivalent, or above, and

who meets all the requirements specified for an Examiner except completion of the prescribed training course, may be used as an Examiner upon satisfactory completion of the training course.

PART 1211—VOLUNTEER GRIEVANCE PROCEDURES

AUTHORITY: Secs. 104(d), 402(14), 420, Pub. L. 93–113, 87 Stat. 398, 407, and 414.

SOURCE: 45 FR 39271, June 10, 1980, unless otherwise noted.

§ 1211.1–1 Purpose.

This part establishes procedures under which certain volunteers enrolled under Pub. L. 93–113 may present and obtain resolution of grievances.

§ 1211.1–2 Applicability.

This part applies to all volunteers enrolled under part A of title I of the Domestic Volunteer Service Act of 1973, as amended, Pub. L. 93–113, (42 U.S.C. 4951 *et seq.*).

§ 1211.1–3 Definitions.

(a) *Volunteer* means a person enrolled and currently serving as a full-time volunteer under part A of title I of the Domestic Volunteer Service Act of 1973. For the purpose of this part, a volunteer whose service has terminated shall be deemed to be a volunteer for a period of 90 days thereafter.

(b) *Grievance* means a matter arising out of, and directly affecting, the volunteer's work situation, or a violation of those regulations governing the terms and conditions of service resulting in the denial or infringement of a right or benefit to the grieving volunteer. Terms and conditions of service refer to those rights and privileges accorded the volunteer either through statute, Agency regulation, or Agency policy.

(1) The relief requested must be directed toward the correction of the matter involving the affected individual volunteer or the affected group of volunteers and may request the revision of existing policies and procedures to ensure against similar occurrences in the future. Requests for relief by more than one volunteer arising from a common cause within one region may be treated as a single grievance. The following are examples of grievable matters:

(i) A volunteer is assigned to an area of harsh climate where special clothing is necessary and not already possessed by the volunteer. A request for a special allowance for such clothing is arbitrarily refused.

(ii) A volunteer submits a request for reimbursement for transportation costs incurred while on authorized emergency leave which is denied.

(iii) The project sponsor fails to provide adequate support to the volunteer necessary for that volunteer to perform the assigned work, such as the sponsor's failure to provide materials to the volunteer which is necessary for the performance of the volunteer's work.

(c) *State Program Officer* means that ACTION official who is directly responsible at the first level for the project in which the volunteer is serving.

(d) *Sponsor* means a public or private nonprofit agency to which ACTION has assigned volunteers.

(e) *Grievance Examiner* or *Examiner* means a person having the qualifications described in Appendix A who is appointed to conduct an inquiry or hearing with respect to a grievance.

(f) *National VISTA Grants Program* means a program operated under part A, title I of the Domestic Volunteer

Service Act in which ACTION awards a grant to a national grantee to operate a VISTA Volunteer program on a national or multi-regional basis.

(g) *Local component* means a local office or project affiliate of a national grantee which has VISTA Volunteers assigned to it under the National VISTA Grants Program.

(h) The *Act* means the Domestic Volunteer Service Act of 1973, Pub. L. 93–113, (42 U.S.C. 4951 *et seq.*), as amended.

§ 1211.1–4 Policy.

It is ACTION's policy to provide volunteers the widest latitude to present their grievances and concerns to appropriate officials of ACTION and of sponsoring organizations. This regulation is designed to assure that the rights of individual volunteers are recognized and to provide formal ways for them to seek redress with confidence that they will obtain just treatment.

§ 1211.1–5 Matters not covered.

Matters not within the definition of a grievance as defined in § 1211.1–3(b) are not eligible for processing under this procedure. The following are specific examples of excluded areas and are not intended as a complete listing of the matters excluded by this part:

(a) The establishment of a volunteer project, its continuance or discontinuance, the number of volunteers assigned to it, increases or decreases in the level of support provided to a project, suspension or termination of a project, or selection and retention of project staff.

(b) Matters for which a separate administrative procedure is provided.

(c) The content of any law, published rule, regulation, policy or procedure.

(d) Matters which are, by law, subject to final administrative review outside ACTION.

(e) Actions taken in compliance with the terms of a contract, grant, or other agreement.

(f) The internal management of the ACTION Agency unless such management is specifically shown to individually and directly affect the volunteer's work situation or the terms and conditions of service as defined in § 1211.1–3(b).

§ 1211.1–6 Freedom to initiate grievances.

The initiation of a grievance shall not be construed as reflecting on a volunteer's standing, performance or desirability as a volunteer. ACTION intends that each supervisor and sponsor, as well as ACTION and its employees, maintain a healthy atmosphere in which a volunteer can speak freely and have frank discussions of problems. A volunteer who initiates a grievance shall not as a result of such an action be subjected to restraint, interference, coercion, discrimination or reprisal.

§ 1211.1–7 Entitlement to representation.

A volunteer may be accompanied, represented, and advised by a representative of the volunteer's own choice at any stage of the proceeding. The volunteer shall designate his or her representative in writing. A person chosen by the volunteer must be willing to act as representative and have no conflict between his or her position and the subject matter of the grievance.

§ 1211.1–8 Time for preparation and presentation.

(a) Both a volunteer and a volunteer's representative, if another volunteer or an employee of ACTION, must be given a reasonable amount of administrative leave from their assignments to present a grievance or appeal.

(b) ACTION will not pay travel expense or per diem travel allowances for either a volunteer or his or her representative in connection with the preparation of a grievance or appeal, except in connection with a hearing and the examination of the grievant file as provided in § 1211.1–12(c).

§ 1211.1–9 Access to agency records.

(a) A volunteer is entitled to review any material in his or her official volunteer folder and any relevant Agency documents to the extent permitted by the Freedom of Information Act and the Privacy Act, as amended, 5 U.S.C. 552, U.S.C. 552a. Examples of documents which may be withheld from volunteers include references obtained

under a pledge of confidentiality, official volunteer folders of other volunteers, and privileged intra-agency documents.

(b) A volunteer may review relevant documents in the possession of a sponsor to the extent such documents are disclosable under the Freedom of Information Act and Privacy Act.

§ 1211.1–10 Informal grievance procedure.

(a) *Initiation of grievance.* A volunteer may initiate a grievance within 15 calendar days after the event giving rise to the grievance occurs, or within 15 calendar days after becoming aware of the event. A grievance arising out of a continuing condition or practice that individually affects the volunteer may be brought at any time. A volunteer initiates a grievance by presenting it in writing to the chief executive officer of the sponsor, or the representative designated to receive grievances from volunteers. The designated representative may not be the immediate supervisor of volunteers assigned to the sponsor. The chief executive officer of the sponsor or the designated representative shall respond in writing to the grievance within five (5) working days after receipt. The chief executive officer or designee may not refuse to respond to a complaint on the basis that it is not a grievance as defined in § 1211.1–3(b), or that it is excluded from coverage under § 1211.1–5, but may, in the written response, refuse to grant the relief requested on either of these grounds.

If the grievance involves a matter over which the sponsor has no control, or if the chief executive officer is the immediate supervisor of the volunteer, the procedures described in this section may be omitted, and the volunteer may present the grievance in writing directly to the State Director or designee as described in paragraph (b) of this section within the time limits specified in this paragraph (a).

(b) *Consideration by ACTION State Director or designee.* If the matter is not resolved to the volunteer's satisfaction by the sponsor's chief executive officer, the volunteer may submit the grievance in writing to the ACTION State Director or designee within five (5) working days after receipt of the decision of the sponsor's chief executive officer. The State Director or designee may not refuse to receive a complaint, even if he or she believes it does not constitute a grievance, and shall respond to it in writing within five (5) working days after receipt. The response may indicate that the matter is not grievable. If the State Director or designee fails to meet the time limit for response, the volunteer may initiate a formal grievance.

(c) *Discussion.* All parties to the informal grievance procedure must be prepared to participate in full discussion of the grievance, and to permit the participation of others who may have knowledge of the circumstances of the grievance in the discussion. State Program Officers and other ACTION employees may participate in discussions and provide guidance with respect to ACTION policies and procedures, at the request of any party, even prior to submission of a grievance to them.

(d) *Sponsor grievance procedure.* A sponsor may substitute its own grievance procedure for the procedure described in paragraph (a) of this section. Any such procedure must provide the volunteer with an opportunity to present a grievance at least as comprehensive as that contained in this section, must meet the time limits of this section, and must be provided in writing to all volunteers. In order to utilize its own grievance procedures, the sponsor must obtain approval of the procedure from the ACTION State Director and file a copy of this approved procedure with the State Office.

§ 1211.1–11 Initiation of formal grievance procedure.

(a) *Submission of grievance to Regional Director.* If a volunteer is dissatisfied with the response of the State Director or designee required by § 1211.1–10(b), he or she may present the grievance in writing to the Regional Director. To be eligible for the formal grievance procedure, the volunteer must have completed action under the informal procedure contained in § 1211.1–10 or have alleged that the State Director or designee exceeded the time specified for response.

(b) *Contents of grievance.* The volunteer's grievance must be in writing, contain sufficient detail to identify the subject matter of the grievance, specify the relief requested, and be signed by the volunteer or a person designated in writing by the volunteer to be the representative for the purpose of the grievance.

(c) *Time limit.* The volunteer must submit the grievance to the Regional Director or designee no later than 15 calendar days after receipt of the informal response by the State Director or designee. If no response is received by the volunteer 15 calendar days after the grievance is received by the State Director or designee, the volunteer may submit the grievance directly to the Regional Director or designee for consideration.

(d) *Within ten (10) working days of the receipt of the grievance, the Regional Director or designee shall, in whole or in part, either decide it on its merits or reject the grievance.* A grievance may be rejected, in whole or in part, for the following reasons:

(1) It was not filed within the time limit specified in paragraph (c) of this section, or

(2) The grievance consists of matters not contained within the definition of a grievance.

(e) *Rejection of a grievance by the Regional Director or designee may be appealed by the volunteer within ten (10) days of receipt of the notice to the Office of General Counsel.* The Office shall immediately request the grievance file from the Regional Director and, within five (5) working days of receipt of it, determine the appropriateness of the rejection. If the grievance was properly rejected by the Regional Director, the Office shall so notify the volunteer of its opinion and the reasons supporting it, and that such rejection is the final Agency decision in the matter. If the Office determines that the grievance was improperly rejected, it shall return the grievance to the Regional Director for a determination on its merits by the Regional Director. Within ten (10) working days of such notification and receipt of the grievance file, the Regional Director or designee shall notify the volunteer in writing of the decision on the merits and specify the grounds for the decision and of the volunteer's right to appeal.

(f) *Time Limit.* If a volunteer is dissatisfied with the decision of the Regional Director or designee on the merits of the grievance, he or she shall notify the Regional Director within five (5) calendar days from receipt of the decision and request the appointment of an Examiner. If the volunteer receives no response from the Regional Director or Office of General Counsel as required by paragraphs (d) and (e) of this section within five (5) calendar days after the prescribed time limits, the volunteer may request in writing that the Regional Director appoint a Grievance Examiner. Upon receipt of this request, the Regional Director or designee shall appoint within five (5) calendar days an Examiner who shall possess the qualifications specified in Appendix A to this part.

§ 1211.1–12 Investigation by Grievance Examiner.

(a) *Scope of investigation.* The Examiner shall conduct an investigation of a nature and scope appropriate to the issues involved in the grievance.

Unless waived by the volunteer, a hearing must be held if the Examiner finds that the grievance involves disputed questions of fact that go to the heart of the agency determination. Only those facts found necessary by the Examiner on which to base his or her findings go to the heart of the Agency determination.

If the grievance does not involve such disputed questions of fact, or if the volunteer waives a hearing, the Examiner need not hold a hearing but must provide the parties an opportunity for presentation of their respective positions. At the Examiner's discretion, the investigation may include:

(1) The securing of documentary evidence,

(2) Personal interviews, including telephone interviews,

(3) Group meetings,

(4) Affidavits, written interrogatories or depositions.

(b) *Conduct of Hearing.* If a hearing is held, the conduct of the hearing and production of witnesses shall conform with the following requirements:

(1) The hearing shall be held at a time and place determined by the Examiner who shall consider the convenience of parties and witnesses and expense to the Government in making his or her decision.

(2) Attendance at the hearing will be limited to persons determined by the Examiner to have a direct connection with the grievance. If requested by the volunteer, the Examiner must open the hearing to the public.

(3) The hearing shall be conducted so as to bring out pertinent facts, including the production of pertinent records.

(4) Formal rules of evidence shall not be applied strictly, but the Examiner may exclude irrelevant or unduly repetitious testimony or evidence.

(5) Decisions on the admissibility of evidence or testimony shall be made by the Examiner.

(6) Testimony shall be under oath or affirmation, administered by the Examiner.

(7) The Examiner shall give the parties an opportunity to present oral and written testimony that is relevant and material, and to cross-examine witnesses who testify.

(8) The Examiner may exclude any person from the hearing for conduct that obstructs the hearing.

(c) *Witnesses.* (1) All parties are entitled to produce witnesses.

(2) Volunteers, employees of a sponsor, and employees of ACTION shall be made available as witnesses when requested by the Examiner. The Examiner may request witnesses on his or her initiative. Parties shall furnish to the Examiner and to opposing parties a list of proposed witnesses, and an explanation of what the testimony of each is expected to show, at least ten (10) calendar days before the date of the hearing. The Examiner may waive the time limit in appropriate circumstances.

(3) Employees of ACTION shall remain in a duty status during the time they are made available as witnesses.

(4) Volunteers, employees and any other persons who serve as witnesses shall be free from coercion, discrimination or reprisal for presenting their testimony.

(5) The Examiner must authorize payment of travel expenses and per diem at standard Government rates for the volunteer and the representative to attend the hearing. Payment of travel expenses and per diem at standard Government rates for other witnesses to attend the hearing are authorized only after the Examiner determines that the required testimony cannot be satisfactorily obtained by affidavit, written interrogatories, or deposition, at a lesser cost.

(d) *Recording of Hearing.* A grievant may make a recording of the hearing at his or her own expense if no verbatim transcript is made. Such a recording is in no way to be treated as the official transcript of the hearing.

(e) *Report of Hearing.* The Examiner shall normally prepare a written summary of the hearing which shall include all documents and exhibits submitted to and accepted by the Examiner during the course of the grievance. An Examiner may require a verbatim transcript if he or she determines that the grievance is so complex as to require such a transcript. If the hearing is reported verbatim, the Examiner shall make the transcript a part of the record of the proceedings. If the hearing is not reported verbatim, a suitable summary of pertinent portions of the testimony shall be made part of the record of proceedings. In such cases, the summary together with exhibits shall constitute the report of the hearing. The parties are entitled to submit written exceptions to any part of the summary, and these written exceptions shall be made part of the record of proceedings.

§ 1211.1–13 Grievance file and examiner's report.

(a) *Preparation and content.* The Examiner shall establish a grievance file containing all documents related to the grievance, including statements of witnesses, records or copies thereof, and the report of the hearing when a hearing was held. The file shall also contain the Examiner's report of findings and recommendations.

(b) *Review by volunteer.* On completion of the inquiry, the Examiner shall make the grievance file available to the volunteer and the representative, if any, for review and comment. Their coments, if any, shall be submitted to

the Examiner within five (5) calendar days after the file is made available and shall be included in the file.

(c) *Examiner's report.* After the volunteer has been given an opportunity to review the grievance file, the Examiner shall submit the complete grievance file to the Director of VISTA.

§ 1211.1–14 Final determination by Director of VISTA.

The Director of VISTA or designee shall issue a written decision on the appeal to the volunteer within ten (10) working days after receipt of the appeal file. The decision shall include a statement of the basis for the determination, and shall be the final Agency decision.

§ 1211.1–15 Disposition of grievance appeal files.

All grievance appeal files shall be retained by the Director of VISTA after the grievance has been settled, or a final decision has been made and implemented. No part of a grievance or appeal file may be made part of, or included in, a volunteer's official folder.

§ 1211.1–16 Grievance procedure for National VISTA Grant Volunteers.

The grievance procedure for National VISTA Grant Volunteers shall be the same as that provided in this part with the following substitutions of officials:

(a) Informal grievance procedure:

(1) The initiation of an informal grievance for a National Grant VISTA, see § 1211.1–10, shall normally be to the sponsor of the local component. If the grievance involves a matter solely within the control of the ACTION State Office, the volunteer may present the grievance to the State Director or designee in lieu of the local component sponsor.

(2) If the volunteer is not satisfied with the response of the appropriate official (sponsor of local component, or State Director or designee), the volunteer may submit the grievance to the chief executive of the national grantee.

(b) Formal grievance procedure:

The Chief, VISTA Program Development Branch or designee shall replace the Regional Director as the official in § 1211.1–11.

APPENDIX A TO PART 1211—STANDARDS FOR EXAMINERS

An examiner must meet the requirements specified in either paragraph (1), (2), (3), or (4) of this appendix:

(1) Current or former federal employees now or formerly in grade GS–12 or equivalent, or above who have:

(a) At least four (4) years of progressively responsible experience in administrative, managerial, professional, investigative, or technical work which has demonstrated the possession of:

(i) The personal attributes essential to the effective performance of the duties of an Examiner, including integrity, discretion, reliability, objectivity, impartiality, resourcefulness, and emotional stability.

(ii) A high degree of ability to:

Identify and select appropriate sources of information; collect, organize, analyze, and evaluate information; and arrive at sound conclusions on the basis of that information;

Analyze situations; make an objective and logical determinationn of the pertinent facts; evaluate the facts; and develop practicable recommendations or decisions on the basis of facts;

Recognize the causes of complex problems and apply mature judgment in assessing the practical implications of alternative solutions to those problems;

Interpret and apply regulations and other complex written material;

Communicate effectively, orally and in writing, including the ability to prepare clear and concise written reports; and

Deal effectively with individuals and groups, including the ability to gain the cooperation and confidence of others.

(iii) A good working knowledge of:

The relationship between volunteer administration and overall management concerns; and

The principles, systems, methods, and administrative machinery for accomplishing the work of an organization.

(2) Designation as an arbitrator on a panel of arbitrators maintained by either the Federal Mediation and Conciliation Service or the American Arbitration Association.

(3) Current or former employment as, or current eligibility on the Office of Personnel Management register for Examiners GS–935–0.

(4) Membership in good standing in the National Academy of Arbitrators.

PART 1212—VOLUNTEER AGENCIES PROCEDURES FOR NATIONAL GRANT VOLUNTEERS—[RESERVED]

PART 1213—ACTION COOPERATIVE VOLUNTEER PROGRAM

Subpart A—General

Sec.

Subpart B—Description of Volunteer Service

Subpart C—ACTION Provided Volunteer Support

Subpart D—Sponsor Provided Volunteer Support

Subpart E—Administrative Hold—Grievances, Removal, Resignation, Suspension, and Termination

Subpart F—Special Conditions Affecting Volunteer Service

Subpart G—Miscellaneous

AUTHORITY: Secs. 121, 122, 402 (12) and (14) and 420 of Pub. L. 93–113, 87 Stat. 395, 400, 401, 407 and 414.

SOURCE: 40 FR 10670, Mar. 7, 1975, unless otherwise noted.

Subpart A—General

§ 1213.1–1 Introduction.

(a) Section 122(a), part C, of the Domestic Volunteer Service Act of 1973 (the Act), Pub. L. 93–113, 87 Stat. 401, authorizes the Director of ACTION to conduct and to make contracts for special volunteer programs to encourage wider volunteer participation on a full-time basis to strengthen and supplement efforts to meet a broad range of human, social, and environmental needs, particularly those related to poverty. The ACTION Cooperative Volunteer Program (ACV) is one of these special volunteer programs. It provides full-time volunteer service opportunities for individuals in assignments with nonprofit and public agency sponsors involving a broad range of human, social, and environmental needs, particularly those related to poverty. Organizations wishing to become sponsors enter into an agreement with ACTION to share expenses associated with ACV volunteer assignments. The sponsor's share consists of reimbursing ACTION for the direct costs of volunteer support, i.e. allowances, stipend and other direct benefits.

(b) Section 122(b) requires that the assignment of ACV volunteers be on such terms and conditions as the Director shall determine.

(c) Section 122(c) provides that the Director may provide to persons serving as full-time volunteers in a program of at least one year's duration such allowances and stipends as he determines are necessary. The kinds and

amount of such allowances and stipends may not exceed those authorized to be provided to VISTA volunteers (part A, title I, Pub. L. 93–113).

Subpart B—Description of Volunteer Service

§ 1213.2–1 Enrollment and duration of service.

ACTION enrolls an individual in ACV during the preservice processing it provides. Such enrollment is for a period comprising the time of such processing, ACTION preservice orientation, and a one-year assignment to a project.

§ 1213.2–2 Provisional volunteers.

Individuals are considered to be provisional volunteers during the period of pre-service processing and ACTION preservice orientation. They have all the rights and benefits and are subject to all the duties of volunteers, except as expressly provided in these regulations or where it would appear from the language of a section of the regulations to be inappropriate.

§ 1213.2–3 Extension of service and reenrollment.

In certain situations, a volunteer may have his period of volunteer service extended for not more than one year, at the request of a sponsor and the concurrence of the appropriate ACTION Regional Director.

A volunteer may only be reenrolled for a period of at least one year. A sponsor must request the reenrollment and it must be approved by the appropriate ACTION Regional Director. No volunteer may serve for more than a total of five years in full-time volunteer programs under Title I of Pub. L. 93–113.

Such extensions and reenrollments may be for the same or different projects and may include interregional and intraregional transfers.

§ 1213.2–4 Living conditions.

To the extent practicable volunteers are expected to make a personal commitment to live among and at the economic level of the people served by the project in which the volunteer works. The sponsor will insure that this commitment is observed.

§ 1213.2–5 Role of the volunteer.

The volunteer's assignments are carried out under the auspices of the sponsor. The volunteer assumes a ''live-in'' obligation carrying his work into all facets of community life and social activity. He is available for service without regard to regular working hours seven days a week, except for periods of approved leave.

Subpart C—ACTION Provided Volunteer Support

§ 1213.3–1 Financial support.

(a) *Food and lodging.* Each ACV volunteer receives from ACTION a food and lodging allowance approximately commensurate with the actual standard of living of the residents of the community to which he is assigned. The amount of this allowance is determined by the Regional Office after consultation with the sponsor.

(b) *Personal living allowance.* ACTION also provides each volunteer a personal living allowance of $75 per month. It is intended to cover incidental expenses and local travel.

(c) *Adjustment allowance.* At the beginning of service, a volunteer may receive from ACTION an adjustment allowance when necessary to cover the initial cost of securing and setting up living quarters. Such an allowance is usually provided only to volunteers who serve outside their home area. It is not usually available to volunteers recruited locally for an assignment in their home or nearby communities.

(d) *Stipend.* At the conclusion of the term of service, each volunteer receives a stipend of $50 for each month of service on an ACV project. Volunteers may be authorized to make biweekly allotments from the stipend, not in excess of $12.50, in extraordinary circumstances. These may include allotments for obligations incurred prior to service for family support, insurance or loan payments and income taxes.

(e) *Provisional volunteers.* Provisional volunteers do not receive any allowances nor do they accrue stipends. During the period they are provisional volunteers their food and lodging is provided by ACTION and they receive a

nominal amount of money for living expenses.

(f) *Emergencies.* In case of emergencies, ACTION may provide the volunteer with assistance and support to prevent injury or hardship to him, including a $500 advance against allowances and stipends due the volunteer or to be paid subsequently to him during his volunteer service.

(g) *No dependent support.* ACTION assumes no financial responsibility for a non-volunteer spouse, a volunteer's children or other dependents.

§ 1213.3–2 Transportation.

ACTION will be responsible for providing the volunteer with needed transportation for the following purposes:

(a) To, and when appropriate, from volunteer/sponsor staging;

(b) To the pre-service processing site, whether it is the ACTION Regional Office or any other designated facility;

(c) To the project site following completion of pre-service processing, and at the beginning of the volunteer's terms of service;

(d) For the return trip from the projects site to the volunteer's home of record following completion of service;

(e) Whenever necessary to enable the volunteer to travel outside the geographic area to which he has been assigned when he does so at the request of the Government;

(f) When approved in cases of emergency.

For the purpose of paragraph (d) of this section, the term ''home of record'' shall be either:

(1) The legal residence of the volunteer's parent or legal guardian if the volunteer had been residing with the parent or legal guardian immediately prior to entering ACTION service, or if the volunteer was a full-time student whose permanent residency was with the parent or legal guardian.

(2) The residence established by the volunteer while attending college immediately prior to entering ACTION.

(3) The residence established by the volunteer while employed immediately prior to entering ACTION.

(4) The legal residence established by the volunteer for purposes of voting and/or payment of state tax.

Each volunteer must specify a home of record at the time he is enrolled. Subsequent modification of the home of record may be authorized in certain circumstances at the discretion of the Regional Director.

§ 1213.3–3 Health support.

ACTION provides ACV volunteers with a health benefits program at no cost to the volunteers.

Coverage includes most medical and surgical costs, hospitalization, prescription drugs, and emergency dental care. ACTION reserves the right to alter the extent, or the method of providing health care for volunteers. In nonemergency situations, the Regional Office must clear hospitalization or other serious (in excess of $150) treatments.

§ 1213.3–4 Legal support.

ACTION will pay certain legal expenses where volunteers are involved in criminal or civil judicial or administrative proceedings to the extent provided in part 1220.

§ 1213.3–5 Insurance.

(a) ACV volunteers are covered by the Federal Employees Compensation Act. This provides a broad-based workmen's compensation-type coverage for volunteer job-related accidents and occupational sickness.

(b) ACV volunteers are also Federal employees for the purpose of the Federal Tort Claims Act. Any third-party claims for injury or damage to property arising out of the volunteer's job-related activities will be treated as claims against the United States.

§ 1213.3–6 Leave.

(a) *Vacation leave.* Once on the job for four months, an ACV volunteer earns one day of leave for each full month of service up to a maximum of seven days, including one weekend. No leave is to be granted during the last month of service, except for emergencies. During leave, the volunteer's regular support allowances are continued. No leave may be taken without the approval of the sponsor.

(b) *Emergency leave.* Should a member of a volunteer's immediate family—spouse, mother, father, sister, brother,

child or guardian—become critically ill or die, emergency leave may be granted by the sponsor for a period of up to one week. Any additional time requires the approval of the ACTION Regional Office. It does not count against vacation leave. The volunteer will be paid for transportation by the fastest scheduled carrier to and from the emergency site and for actual travel expenses incurred, but not in excess of those authorized in standard government travel regulations.

§ 1213.3–7 Federal service.

Section 415(c) of the Act provides that should an ACV volunteer subsequently enter Federal service, his period of volunteer service counts as a like period of Federal service for certain purposes, including job security and retirement benefits.

§ 1213.3–8 Lost property.

(a) The Regional Director may at his discretion reimburse volunteers or trainees for or replace lost, damaged, or stolen property; cash representing certain allowances; and equipment and supplies if:

(1) Reimbursement is essential to the volunteer's capacity to serve effectively in his particular assignment for the duration of his service, and

(2) The loss, damage, or theft did not result from the volunteer's negligence.

(b) Lost or stolen cash may be reimbursed only if it represents the volunteer's food and lodging or living allowance or other payments essential to the volunteer's service. Lost or stolen cash representing payment of stipend or vacation allowances will not be reimbursed.

(c) No reimbursement will be made for luxury items, such as photographic or phonographic equipment or jewelry.

Subpart D—Sponsor Provided Volunteer Support

§ 1213.4–1 Training.

(a) The sponsor is fully responsible for designing and implementing a program of in-service training which will completely equip the volunteer to perform the tasks to which he has been assigned.

(b) In-service training will be conducted by the sponsor in accordance with plans agreed upon during the program development process, and submitted to ACTION as part of the agreement. Those plans must be tailored to the volunteer's needs for additional skills and information in the performance of assigned tasks.

§ 1213.4–2 Supervision.

The sponsor has the sole responsibility for providing appropriate supervision, leadership, and direction to the volunteers in conformance with the plan prepared in cooperation with ACTION and submitted with the project proposal. The plan is to be executed in such a manner that the volunteers can attain project goals within the proposed time frame.

§ 1213.4–3 Job-related transportation.

The sponsor is responsible for determining the job-related transportation needs of the volunteer. The volunteers are expected to use public transportation in connection with their work whenever it is available and adequate. When it is not, the sponsor shall provide suitable private transportation, including obtaining and maintaining motor vehicles for the job-related use of the volunteers as appropriate. Whether the sponsor purchases vehicles or obtains them through a leasing arrangement, he is responsible for monitoring the use of those vehicles and restricting the use of transportation provided to volunteers to work on the project. The volunteer and the sponsor are jointly responsible for compliance with all state and local laws concerning vehicle registration, operator licensing, and financial responsibility on any private vehicles used by the volunteer, either as part of his work assignment or for personal convenience.

§ 1213.4–4 Supplies and equipment and office facilities.

The sponsor is responsible for providing most job-related support involving facilities, equipment, and consumable supplies needed by the volunteer, including telephone and secretarial support.

§ 1213.4–5 Emergencies.

In case of emergencies in which it is not possible for ACTION to provide a volunteer with the necessary assistance and support in time to prevent injury or hardship to him, the sponsor may furnish the needed assistance, including an advance of up to $500 from its own funds to the volunteer. Such advances, however, should be cleared in advance by telephone with the ACTION Regional Director or designee.

Subpart E—Administrative Hold—Grievances, Removal, Resignation, Suspension and Termination

§ 1213.5–1 Administrative hold.

(a) Volunteers will be placed in Administrative Hold Status under the following circumstances:

(1) No placement after training.

(2) Pending transfer to a new project.

(3) Leave taken for personal reasons in excess of the seven days for vacation leave, seven days for emergency leave, seven days for extension beyond three months, and fourteen days for reenrollment.

(4) Absence from project site without authority of the sponsoring organization.

(5) During termination action.

(6) Arrest and placement in jail without bail, depending on nature of charges.

(7) Removal from site at request of sponsoring organization, pending decision on transfer to new assignment.

(b) Exceptions to these guidelines must be authorized by the Regional Director. Volunteers may be placed in Administrative Hold status for up to 30 days. In exceptional circumstances, the Regional Director may extend this period of time as appropriate. The Regional Director may modify any and all allowances, including stipend, when a volunteer is placed in Administrative Hold status.

§ 1213.5–2 Volunteer grievances.

(a) At times, a volunteer will consider that he has been adversely affected in some matter arising out of his work situation or the terms and conditions of his service. The Volunteer Grievance Procedure, part 1211, furnished to each volunteer, applies to certain of these matters. This procedure is applicable to situations in which the volunteer believes there has been a deviation from, misinterpretation or misapplication of laws, regulations, policies or procedures governing his service.

(b) The Grievance Procedure establishes a formal and informal mechanism to resolve such problems. The informal mechanism aims to resolve disputes at the level of the sponsor and the state program officer. The formal part of the Grievance Procedure provides a hearing in certain cases and includes appeals to ACTION's national office in Washington.

(c) The procedure that the sponsor employs at the informal stage of the ACTION Grievance Procedure will also be used for any disputes between the sponsor and a volunteer not involving a law or regulation or an ACTION policy and procedure.

§ 1213.5–3 Resignation.

A volunteer may resign at any time, by notifying the sponsoring organization and the Regional Office. When practicable, thirty days advance notice should be given to insure that the departure will be only minimally disruptive to the project. In case of resignation, all outstanding advances, including unearned vacation allowances, are deducted from the volunteer's stipend. The volunteer receives his final stipend check three to five weeks after regional submission of the termination papers to ACTION/Washington.

§ 1213.5–4 Sponsor request for removal of volunteer.

The sponsoring organization may request ACTION to remove a volunteer whose performance in its view is unsatisfactory at any time. Before resorting to a formal request for removal the sponsor should contact the appropriate ACTION state official to seek help in trying to resolve any problem with a volunteer. The sponsor may then prepare a written request for removal and submit it to the Regional Office. ACTION may, depending on the circumstances, follow one of three courses of action: (a) Suspend the volunteer, (b)

terminate him, or (c) transfer him to another project.

§ 1213.5–5 Suspension and termination.

(a) *Causes.* ACTION may suspend or terminate a volunteer for any of the following reasons:

(1) Conviction of any criminal offense under Federal, state, or local statute or ordinance;

(2) Violation of any provision of the Domestic Volunteer Service Act of 1973, or any ACTION policy, regulation or instruction;

(3) Failure, refusal or inability to perform prescribed project duties as outlined in the project proposal and directed by the sponsoring organization to which the volunteer is assigned;

(4) Involvement in activities which substantially interfere with the volunteer's performance of his/her duties on the project;

(5) Intentional false statement, omission, fraud, or deception in obtaining selection as a volunteer;

(6) Any conduct on the part of the volunteer which substantially diminishes his/her effectiveness as a volunteer;

(7) Inability to perform the project duties because of serious illness, medical disability, or pregnancy, as determined by the attending physician, in accordance with ACTION policy;

(8) Lack of a viable job for which the volunteer is qualified if the initial job assignment ends or is terminated prior to completion of a period of service;

(9) Unsatisfactory job performance. Procedures for the suspension and termination of volunteers are contained in part 1210.

(b) *Suspension.* Volunteers may be suspended for up to 30 days to enable ACTION to determine whether termination proceedings should be started against the volunteer. Suspension is not warranted if sufficient evidence exists to start termination proceedings.

(c) *Termination of or refusal to renew ACTION/sponsoring organization agreement.* If the Memorandum of Agreement between ACTION and a sponsoring organization is terminated or not renewed, a volunteer who is removed from the project and whose removal was not caused by conduct which would otherwise be grounds for termination is entitled to the following administrative considerations:

(1) Reassignment to another project where possible.

(2) If reassignment is not possible at the time of project close-out, and if the volunteer wishes to resume service (provided that his/her job performance has been satisfactory), he/she may, at the discretion of the Regional Director, receive special consideration for reinstatement as soon as an appropriate slot is open.

If a volunteer wishes, he/she may terminate without prejudice in the event that a Memorandum of Agreement between ACTION and the sponsor is terminated.

(d) *Deselection of a provisional volunteer.* The Regional Director may deselect a provisional volunteer on the grounds listed in paragraph (a) of this section or for a failure to meet training or selection standards during pre-service orientation. Procedures for such deselection are contained in part 1210.

[40 FR 10670, Mar. 7, 1975; 46 FR 6951, Jan. 22, 1981]

Subpart F—Special Conditions Affecting Volunteer Service

§ 1213.6–1 Sponsor's employment of volunteer.

ACV volunteers make a commitment to one full year of ACTION service. Similarly, ACTION asks that the sponsor on his part must honor the spirit of that commitment and refrain from offering fully paid employment to volunteers during their first year of service. Volunteers may not perform services or duties or engage in activities for which the sponsor receives or requests any compensation. Volunteers may not receive any other compensation, directly or indirectly, from a sponsor while serving as a volunteer.

§ 1213.6–2 Nondisplacement of employees and impairment of contracts of service.

An ACV volunteer's assignment is limited to activities that would not otherwise be performed by employed workers and which will not supplant the hiring of or result in the displacement of employed workers, or impair

existing contracts for service. (part 1216 implements this provision.)

§ 1213.6–3 Nonappropriate assignments.

(a) An assignment is not appropriate for a volunteer if:

(1) The service, duty, or activity is principally administrative or clerical, or

(2) The volunteer is not directly in contact with groups or individuals who are to be served by the project or is not performing services, duties, or engaged in activities which are authorized under section 122(a) of the Act.

§ 1213.6–4 Political activities and limitation of unlawful activities.

(a) ACV volunteers are covered by the Hatch Act to the same extent as Federal employees. This Act prohibits volunteers from engaging in partisan political activities of any sort at any and all times during their terms of service, including periods of official leave.

(b) Section 403 of Pub. L. 93–113 requires that a sponsor's project be operated in such a manner as to avoid involvement of ACV volunteers in any partisan or nonpartisan political activity in an election for public or party office, voter transportation during elections, and voter registration drives.

(c) While engaged in carrying out their duties volunteers may, as a part of the project, participate in lawful and nonpolitical demonstrations and protest activities which are approved by the sponsor as a part of its project activity and which are not in violation of any ACTION policies.

§ 1213.6–5 Nondiscrimination.

Part 1203 provides regulations concerning nondiscrimination in ACTION programs and activities.

(a) No person with responsibilities in the operation of an ACV project shall discriminate with respect to such program because of race, creed, belief, color, national origin, sex, age, or political affiliation.

§ 1213.6–6 Religious activities.

Volunteers will not give religious instruction, conduct worship services, or engage in any other religious activity as part of their duties. Volunteers who serve in an institution that gives religious instruction or engages in other religious activities will not be used as replacements for regular personnel of the institution. For example, volunteers assigned to serve in a program conducted under the auspices of a church-related school may not be used as substitutes for regular teachers in the school. They may, however, work in new programs which are carried on in addition to the school's regular programs and which are conducted in conformance with the above restrictions.

§ 1213.6–7 Evaluation.

(a) On a quarterly basis and two months prior to the termination of a volunteer's year of service, and at any other time which circumstances may dictate, ACTION may inspect that portion of a project with which the volunteer is involved. The purpose of the inspection will be to independently observe and judge the extent to which the volunteer's work has contributed to the objectives of the program described in the project proposal.

(b) The sponsor is expected to cooperate fully with ACTION representatives, and ACTION will in turn review results of the evaluation with the sponsor.

§ 1213.6–8 Limitation on labor and anti-labor activities.

Volunteers may not engage in any activities, services, or duties which assist any labor or anti-labor organizing activity, or related activity.

§ 1213.6–9 Loans and debts.

(a) ACVs have the same legal and financial responsibilities as do all other persons. Volunteers are encouraged to pay all legal debts promptly to avoid creating a situation which would impair the volunteer's ability to function. In cases of continued financial irresponsibility by a volunteer to the extent of embarrassment or adverse reflection upon the sponsor organization's project or ACTION, administrative or disciplinary action may be taken by the Regional Office, up to and including termination, where appropriate.

(b) Volunteers are not authorized to obtain extension of credit by representing themselves as a Federal Government employee.

Subpart G—Miscellaneous

§ 1213.7–1 Student loan deferrals.

(a) The Higher Education Act of 1965, as amended, exempts full-time domestic volunteers from repayment of National Defense Education Act loans for a period of service not to exceed three years. Volunteers wishing to defer repayment of NDEA loans must obtain the necessary forms from their universities. Regional Offices are authorized to certify these forms, but if the university or volunteer should submit the form to Headquarters for certification, it will be sent to the appropriate Regional Office for completion.

(b) If the volunteer is still in service at the time of ACTION's certification, his anticipated termination date will be furnished to the lender.

(c) Repayment of other college loans may also be deferred. These repayments, however, are deferred at the discretion of the lender. If the lender is willing to defer payment, volunteers must obtain the necessary forms from the lender and forward them to the Regional Office for certification. If forms are not available from the lender, a letter to the university or lender may be prepared certifying the dates of the volunteer's service.

§ 1213.7–2 Death benefits.

In case of the death of a volunteer away from his home of record, certain costs associated with transportation of the body are reimbursable either under the Federal Employees Compensation Act or ACTION policy. Volunteers whose death results from personal injury or illness sustained in the performance of his project duties are eligible for reimbursement of certain funeral expenses. Monthly benefits for eligible dependents of deceased volunteers may be available under the Federal Employees Compensation Act. In certain other unusual circumstances, payment of certain funeral expenses for volunteers not meeting the above requirements may be authorized.

§ 1213.7–3 Firearms.

ACTION volunteers may not normally possess, use, or carry firearms. If a volunteer wishes to keep firearms for hunting, approval must be obtained from the sponsor, State Program Director and the ACTION Regional Director in the region where the volunteer is assigned. The volunteer must request approval for possession or use of firearms from his sponsor and his State Program Director. If he receives their approval, his request may then be considered by his ACTION Regional Director. If approval is granted by the ACTION Regional Director, the volunteer must adhere to all state and local regulations relating to the possession and use of firearms.

PART 1214—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY ACTION

Sec.

AUTHORITY: 29 U.S.C. 794; 42 U.S.C. 5057.

SOURCE: 55 FR 47761, Nov. 15, 1990, unless otherwise noted.

§ 1214.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit

discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1214.102 Application.

This part applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 1214.103 Definitions.

For purposes of this part, the term—

Agency means ACTION.

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504 of the Act. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Individuals with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term ''physical or mental impairment'' includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limit major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

Qualified individual with handicaps means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, an individual with handicaps who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive educational services from the agency;

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) *Qualified handicapped person* as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 1214.140.

Section 504 of the Act means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810), and the Civil Rights Restoration Act of 1987 (Pub. L. 100–259, 102 Stat. 28). As used in this part, section 504 of the Act applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ 1214.104—1214.109 [Reserved]

§ 1214.110 Self-evaluation.

(a) The agency shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the self-evaluation, required under paragraph (a) of this section, maintain on file and make available for public inspection—

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 1214.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 of the Act and this part.

§§ 1214.112—1214.129 [Reserved]

§ 1214.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit,

or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would be to—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 1214.131—1214.139 [Reserved]

§ 1214.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 1214.141—1214.148 [Reserved]

§ 1214.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 1214.150, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 1214.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps; or

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1214.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section within sixty days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the agency official responsible for implementation of the plan.

§ 1214.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to

and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 1214.152—1214.159 [Reserved]

§ 1214.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid will be provided, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide a sign at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be displayed at each primary entrance to each accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1214.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 1214.161—1214.169 [Reserved]

§ 1214.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Director, Equal Opportunity Staff.

PART 1215—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT

Sec.

AUTHORITY: Pub. L. 93–113, 87 Stat. 411 (42 U.S.C. 4951, et seq.); 42 U.S.C. 5042 (13); and 5 U.S.C. 552.

SOURCE: 55 FR 20153, May 15, 1990.

§ 1215.1 Purpose.

The purpose of this part is to prescribe rules for the inspection and copying of opinions, policy statements, manuals, instructions, and other records of ACTION pursuant to the Freedom of Information Act (5 U.S.C. 552). Information customarily furnished to the public in the regular course of ACTION's official business may continue to be furnished to the public without complying with this part, provided that the furnishing of such information would not violate the Privacy Act of 1974 (5 U.S.C. 552a). Rules for the disclosure by ACTION of records protected by the Privacy Act are set forth at 45 CFR part 1224.

§ 1215.2 Definitions.

As used in the part, the following definitions shall apply:

(a) *The Act* means the Freedom of Information Act (5 U.S.C. 552).

(b) *The Agency* means ACTION.

(c) *Records* include all books, papers, maps, photographs or other documentary material, or copies thereof, regardless of physical form or characteristics, made or received by ACTION and preserved as evidence of its organization, functions, policies, decisions, procedures, operations or other activities; but do not include books, magazines, or other materials not produced by ACTION and acquired solely for reference purposes.

(d) *Search* means time spent locating records responsive to a request, including page-by-page or line-by-line identification of responsive material within a record.

(e) *Review* means the process of examining records located in response to a request to determine whether any record or portion of a record is permitted to be withheld. It also includes processing records for disclosure (*i.e.,* excising portions not subject to disclosure under the Act and otherwise preparing them for release). Review does not include time spent resolving legal or policy issues regarding the application of exemptions under the Act.

(f) *Commercial use request* means a request from, or on behalf of, a person who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. The use to which a requester will put the records sought will be considered in determining whether the request is a commercial use request.

(g) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, or an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research.

(h) *Non-commercial scientific institution* means an institution that is not operated on a for-profit basis and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(i) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast information that is about current events or that would be of current interest to the public. Examples of news media entities include television and radio stations broadcasting to the public at large, and publishers of periodicals (but only those publishers who qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as new methods of news dissemination evolve (e.g., electronic dissemination

of newspapers through telecommunications services), such alternative media would be included in this category. ''Freelance'' journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Agency may also look to the past publication record of a requester in making this determination.

(j) *Business information* means trade secrets or other commercial or financial information.

(k) *Business submitter* means any commercial entity which provides business information to ACTION and which has a proprietary interest in such information.

(l) *Appeal* means the appeal by a requester of an adverse Agency determination on his/her request, or on his/her application for a waiver of fees, as described in 5 U.S.C. 552(a)(6)(A)(ii).

§ 1215.3 Availability of records.

(a) All publications and other documents heretofore provided by ACTION to the public in the normal course of Agency business will continue to be made available upon request to the Agency.

(b) The Agency will promptly make available to any member of the public who requests them, the following Agency records:

(1) Final opinions and orders made in the adjudication of cases;

(2) Statements of policy and interpretation adopted by an office which have not been published in the FEDERAL REGISTER; and

(3) Administrative staff manuals and instructions to the staff which affect the public.

(c) A current index, which shall be updated at least quarterly, of the foregoing materials, is maintained by the Agency, and copies of same or any portion thereof will be furnished upon request. The Agency deems further publication of such index in the FEDERAL REGISTER unnecessary and impractical.

(d) To the extent necessary to prevent a clearly unwarranted invasion of personal privacy, the Agency may delete identifying details from materials furnished under this section.

(e) Brochures, leaflets, and other similar published materials shall be furnished to the public on request to the extent they are available. Copies of any such materials which are out of print shall be furnished at the cost of duplication, provided, however, that, in the event no copy exists, the Agency shall not be responsible for reprinting the document.

(f) All records of ACTION which are requested by a member of the public in accordance with the procedures established in this part shall be timely made available for inspection or copying, at the Agency's option, except to the extent that the Agency determines such records are exempt from disclosure under the Act.

(g) The Agency will not be required to create new records, compile lists of selected items from its files, or provide a requester with statistical or other data (unless such data have been compiled previously and are available in the form of a record, in which event such data shall be made available as provided in this part).

§ 1215.4 Location of records.

(a) The Agency maintains a central records room at its headquarters, located at 1100 Vermont Avenue NW., Washington, DC 20525. The specific location of the central records room may change from time to time, but may be ascertained by inquiry to the receptionist in the Office of the Director, ACTION.

(b) The Agency maintains regional offices in the following locations:

Region I—Boston, Massachusetts (Connecticut, Maine, Massachusetts, New Hampshire, Vermont and Rhode Island)

Region II—New York, New York (New Jersey, New York, Puerto Rico and Virgin Islands)

Region III—Philadelphia, Pennsylvania (Delaware, District of Columbia, Kentucky, Maryland, Ohio, Pennsylvania, Virginia and West Virginia)

Region IV—Atlanta, Georgia (Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina and Tennessee)

Region V—Chicago, Illinois (Illinois, Indiana, Iowa, Michigan, Minnesota and Wisconsin)
Region VI—Dallas, Texas (Arkansas, Kansas, Louisiana, Missouri, New Mexico, Oklahoma and Texas)
Region VIII—Denver, Colorado (Colorado, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming)
Region IX—San Francisco, California (American Samoa, Arizona, California, Guam, Hawaii and Nevada
Region X—Seattle, Washington (Alaska, Idaho, Oregon and Washington)

ACTION also maintains offices in most States, usually in the State capital.

These field offices are not responsible for maintaining indexes, reading rooms, or records or documents other than those created and maintained in the normal course of the official business of such offices.

§1215.5 Record request and response procedures.

(a) *How made and addressed.* Requests under the Act for access to ACTION records must be in writing, and must either be mailed or hand-delivered to the FOIA Officer, 1100 Vermont Avenue NW., Washington, DC 20525. All such requests, and the envelopes in which they are sent, must be plainly marked ''FOIA Request''. Hand-delivered requests will be received between 8:30 a.m. and 5 p.m., Monday through Friday, except on official holidays.

(b) *Agreement to pay fees.* The filing of a request under this subpart shall be deemed to constitute an agreement by the requester to pay all applicable fees under §1215.7 of this part, up to $25, unless a waiver of fees is sought in the request letter. When filing a request, a requester may agree to pay a greater amount, if applicable.

(c) *Request must adequately describe the records sought.* A request must describe the records sought in sufficient detail to enable Agency personnel to locate the records with reasonable effort. A request shall be regarded as fulfilling this requirement if it enables the Agency to identify responsive documents without unreasonable burden to or disruption of Agency operations. Persons wishing to inspect or secure copies of records should describe and identify such records as fully and as accurately as possible. Among the kinds of identifying information which a requester may provide are the following:

(1) The unit or program of the Agency which may have produced or may otherwise have custody of the record, e.g., VISTA (Volunteers In Service To America), RSVP (Retired Senior Volunteer Program), FGP (Foster Grandparent Program);

(2) The specific event or action, if any, to which the record pertains;

(3) The date of the record, or the time period to which it refers or relates;

(4) The type of record (e.g., application, contract, grant or report);

(5) The name(s) of Agency personnel who may have prepared or been referenced in the record; and

(6) Citation to newspapers or other publications which refer to the record.

(d) *Initial processing.* Upon receipt of a request for Agency records, the FOIA Officer will make an initial determination as to whether the request describes requested records with sufficient specificity to determine the office of the Agency having custody of any responsive records. If so, upon making such initial determination, he/she shall refer such request to the head of the custodial office. The office head shall promptly ascertain whether the description of record(s) requested is sufficient to permit a determination as to existence, identification, and location. The FOIA Officer will provide FOIA guidance and assistance to the ACTION staff.

(e) *Insufficiently identified records.* On making a determination that the description contained in the request does not sufficiently describe a requested record, the FOIA Officer shall promptly so advise the requester in writing and by telephone if possible. The FOIA Officer shall provide the requester with appropriate assistance to help the requester provide any additional information which would better identify the record.

The requester may submit an amended request providing the necessary additional identifying information. Such a request shall be deemed to have been received by the Agency on the date it receives the amended request.

(f) *Release, of record; denial and right to appeal.* Upon receipt of a request specifically identifying existing Agency records, the Agency shall, within ten working days, either grant or deny the request in whole or in part, as provided in this subpart. Any notice of denial in whole or in part shall also inform the requester of his/her right to appeal the denial, in accordance with the procedures set forth at §1215.9 below.

If the FOIA Officer determines that a request describes a requested record sufficiently to permit its identification, he/she shall make it available unless he/she determines, after consultation with the General Counsel, as appropriate, to withhold the record as exempt from mandatory disclosure under the Act.

(g) *Form and content of notice granting a request.* The Agency shall provide written notice of a determination to grant a request. Such notice shall describe the manner in which the record will be disclosed, whether by providing a copy of the record to the requester or by making the record available to the requester for inspection at a reasonable time and place. The procedure for inspection shall not unreasonably disrupt the operations of the Agency. The Agency shall inform the requester in the notice of any fees charged in accordance with the provisions of §1215.7 of this part.

(h) *Form and content of notice denying a request.* The Agency shall notify a requester in writing of the denial of a request in whole or in part. Such notice shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason or reasons for the denial, including the exemption or exemptions under the Act on which the Agency has relied in denying the request, and a specific explanation of the manner in which the exemption or exemptions apply to each record withheld; and

(3) A statement that the denial may be appealed under §1215.9 of this part, and a copy of that section.

§1215.6 Time limits and extensions.

(a) The time limits specified for the Agency's initial response in §1215.5, and for its determination on an appeal in §1215.9, are mandatory, and a person requesting records shall be deemed to have exhausted his/her administrative remedies with respect to such request in the event the Agency fails to comply with the applicable time limits in accordance with this section.

(b) The time limits specified for the Agency's initial response in §1215.5, and for its determination on an appeal in §1215.9, may be extended by the Agency upon written notice to the requester which sets forth the reasons for such extension and the date upon which the Agency will respond to the request. Such extension may be applied at either the initial response stage or the appeal stage, or both, provided the aggregate of such extensions shall not exceed ten working days. Circumstances justifying an extension under this subpart may include the following:

(1) Time necessary to search for and collect requested records from field offices of the Agency;

(2) Time necessary to locate, collect and review voluminous records responsive to a single request; or

(3) Time necessary for consultation with another agency having an interest in the request; or among two or more offices of ACTION which have an interest in the request; or with a submitter of business information having an interest in the request.

§1215.7 Schedule of fees.

(a) It is the policy of ACTION to encourage the widest possible dissemination of information concerning the programs under its jurisdiction. To the extent practicable, its policy will be applied under this part so as to permit requests for inspection of copies of records to be met without substantial cost to requesters.

(b) Request processing charges will be determined by category of request, as follows:

(1) *Commercial use requests.* When a request for records is made for commercial use, charges will be assessed to cover the costs of searching for, reviewing for release, and reproducing the records sought.

(2) *Requests for educational and noncommercial scientific institutions.* When a

request for records is made by an educational or a non-commercial scientific institution in furtherance of scholarly or scientific research, respectively, charges will be assessed to cover the cost of reproduction alone, excluding charges for reproduction of the first 100 pages.

(3) *Requests from representatives of the news media.* When a request for records in made by a representative of the news media for the purpose of news dissemination, charges will be assessed to cover the cost of reproduction alone, excluding charges for reproduction of the first 100 pages.

(4) *All other requests.* When a request for records is made by a requester who does not fit into any of the preceding categories, charges will be assessed to cover the costs of searching for and reproducing the records sought, excluding charges for the first two hours of search time and for reproduction of the first 100 pages. (However, requests from individuals for records about themselves contained in the Agency's systems of records will be treated under the fee provisions of the Privacy Act of 1974 which permit the assessment of fees for reproduction costs only, regardless of the requester's characterization of the request).

(c) Fees assessed shall provide only for recovery of the Agency's direct costs of search, review, and reproduction. Review costs shall include only the direct costs incurred during the initial examination of a record for the purposes of determining whether a record must be disclosed under this part and whether any portion of a record is exempt from disclosure under this part. Review costs shall not include any costs incurred in resolving legal or policy issues raised in the course of processing a request or an appeal under this part.

(d) When the Agency believes that a requester or group of requesters has divided one request into series of requests for the purpose of evading the assessment of fees, the Agency may treat such requests as a single request.

(e) The following charges may be assessed for copies of records provided to a requester:

(1) Copies made by photostat shall be charged at the rate of $0.10 per page.

(2) Searches for requested records performed by clerical/administrative personnel shall be charged at the rate of $3.00 per quarter hour.

(3) Where a search for requested records cannot be performed by clerical/administrative personnel (for example, where the tasks of identifying and compiling records responsive to a request must be performed by a skilled technician or professional), such search shall be charged at the rate of $5.50 per quarter hour.

(4) Computer searches for requested records shall be charged at a rate commensurate with the combined cost of computer operation and operator's salary attributable to the search.

(f) In the event a request for records does not state that the requester will pay all reasonable costs, or costs up to a specified dollar amount, and the FOIA Officer determines that the anticipated assessable costs for search, review and reproduction of requested records will exceed $25.00, or will exceed the limit specified in the request, the requester shall be promptly notified in writing and by telephone. Such notification shall state the anticipated assessable costs of search, review and reproduction of records requested. The requester shall be afforded an opportunity to amend the request to narrow the scope of the request, or, alternatively, may agree to be responsible to pay the anticipated costs. Such a request shall be deemed to have been received by the Agency upon the date of receipt of the amended request.

(g) Advance payment of assessable fees are not required from a requester unless:

(1) The Agency estimates or determines that assessable charges are likely to exceed $250.00, and the requester has no history of payment of FOIA fees. (Where the requester has a history of prompt payment of fees, the Agency shall notify the requester of the likely cost and obtain satisfactory assurance of full payment.)

(2) A requester has previously failed to pay a FOIA fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing).

When the Agency acts under paragraph (g) (1) or (2) of this section, the administrative time limits prescribed

in subsection (a)(6) of the Act will begin to run only after the Agency has received fee payments or assurances.

(h) Interest charges on an unpaid bill may be assessed starting on the 31st day following the day on which the billing was sent. Interest will be assessed at the rate prescribed in section 3717 of title 31 U.S.C., and will accrue from the date of billing.

(i) Payment of fees shall be forwarded to the FOIA Officer by check or money order payable to ''ACTION.'' A receipt for any fees paid will be provided upon written request.

(j) Charges may be assessed for search and review time, even if the Agency fails to locate records responsive to a request of if records located are determined to be exempt from disclosure.

(k) No fee shall be charged if the costs of routine collection and processing of the fee will equal or exceed the amount of the fee.

(1) A requester may, in the original request, or subsequently, apply for a waiver or reduction of document search, review and reproduction fees. Such application shall be in writing, and shall set forth in detail the reason(s) a fee waiver or reduction should be granted. The amount of any reduction requested shall be specified in the request. (See appendix A—Sample Request Letter.) Upon receipt of such a request, the FOIA Officer shall refer the request to the Deputy Director or to such official as the Deputy Director may designate, who shall promptly determine whether such fee waiver or reduction shall be granted.

(2) A waiver or reduction of fees shall be granted only if release of the requested information to the requester is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Agency, and is not primarily in the commercial interest of the requester. The Agency shall consider the following factors in determining whether an application for a fee waiver or reduction will be granted:

(i) Does the requested information concern the operations or activities of the Agency?

(ii) If so, will disclosure of the information be likely to contribute to public understanding of the Agency's operations and activities?

(iii) If so, would such a contribution be significant?

(iv) Does the requester have a commercial interest that would be furthered by disclosure of the information?

(v) If so, is the magnitude of the identified commercial interest of the requester sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester? In applying this criterion, the Agency will weigh the requester's commercial interest against any public interest in disclosure. Where there is a public interest in disclosure, and the public interest can fairly be regarded as being of greater magnitude than the requester's commercial interest, a fee waiver or reduction will be granted. In those instances where a news media requester, scholar, or public interest group has satisfied the ''public interest'' standard necessary for waiver, that, and not the requester's commercial interest, is the interest primarily served by disclosure to that requester and a waiver or reduction of fees will be granted.

(3) When a fee waiver application involving cost has been included in a request for records, the request shall not be deemed to have been received until an Agency determination is made regarding the fee waiver application. Such determination shall be made within five working days from the date any such request is received by the Agency.

(l) The Agency may use the authorities of the Debt Collection Act of 1982 (Pub. L. 97–365), including disclosure to consumer reporting agencies and the use of collection agencies, to encourage payment of delinquent fees.

§ 1215.8 Business Information.

(a) Business information provided to ACTION by a business submitter shall be disclosed pursuant to a request under the Act in accordance with this section.

(b) The Agency shall promptly notify a business submitter in writing of any request for Agency records containing business information. Such written notice shall either specifically describe

the nature of the business information requested or provide copies of the records, or portions thereof containing the business information.

(c) Through the notice required in paragraph (b) of this section, the Agency shall afford a business submitter a reasonable opportunity to object to disclosure of the information in question, and to provide the Agency with a written statement of grounds for such objection.

Such statement shall specify all grounds for withholding any information under any exemption of the Act and, in cases where it argues information should be withheld under Exemption (b)(4) of the Act, a business submitter shall state specifically why the information is a trade secret or is otherwise protected as proprietary commercial or financial information. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under the Act.

(d) The Agency shall consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to release requested business information. Whenever the Agency decides to disclose business information over the objection of a business submitter, the Agency shall forward to the business submitter a written notice of such decision, which shall include:

(1) The name, and title or position, of the person responsible for denying the submitter's objection;

(2) A statement of the reasons for which the business submitter's objection was not sustained;

(3) A description of the business information to be disclosed; and

(4) A specific disclosure date.

Such notice of intent to disclose business information shall be mailed by the Agency not less than six working days prior to the date upon which disclosure will occur, with a copy of such notice to the requester.

(e) Whenever a requester brings suit to compel disclosure of business information, the Agency shall promptly notify the business submitter.

(f) The notice to submitter requirements of this section shall not apply if:

(1) The Agency determines that the information shall not be disclosed;

(2) The information has previously been published or otherwise lawfully been made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

§ 1215.9 Appeal procedures.

Upon receipt of a notice of denial, a requester may, within 15 calendar days from the date of receipt of such notice, appeal such adverse determination to the Deputy Director. Such appeal shall be in writing and shall specify the date upon which the notice of denial was received by the person making such appeal. (See appendix 1 (A & B)—Sample Request and Appeal Letters.) The Deputy Director shall make a determination with respect to any appeal within 20 working days after receipt of such appeal, and shall give written notice of such determination to the person making the appeal. To the extent the Deputy Director's determination on appeal upholds the original denial, the notice of such determination shall inform the person making the appeal of his/her right to seek judicial review of the Agency's denial and ruling on appeal as provided in 5 U.S.C. 552(a)(4).

§ 1215.10 Records which may be exempt from disclosure.

The following categories are examples of records maintained by ACTION which, under the provision of 5 U.S.C. 552(b), may be exempted from disclosure:

(a) Records required to be withheld under criteria established by an Executive Order in the interest of national defense or foreign policy and which are in fact properly classified pursuant to any such Executive Order. Included in this category are records required by Executive Order No. 11652, as amended, to be classified in the interest of national defense or foreign policy.

(b) Records related solely to internal personnel rules and practices. Included in this category are internal rules and regulations relating to personnel management and operations which cannot

be disclosed to the public without substantial prejudice to the effective performance of significant function of the Agency.

(c) Records specifically exempted from disclosure by statute.

(d) Information of a commercial or financial nature including trade secrets given in confidence. Included in this category are records containing commercial or financial information obtained from any person and customarily regarded as privileged and confidential by the person from whom they were obtained.

(e) Interagency or intra-agency memoranda or letters which would not be available by law to a party other than a party in litigation with the Agency. Included in this category are memoranda, letters, interagency and intra-agency communications and internal drafts, opinions and interpretations prepared by staff or consultants and records of deliberations of staff, ordinarily used in arriving at policy determinations and decisions.

(f) Personnel, medical and similar files. Included in this category are personnel and medical information files of staff, volunteer applicants, former volunteers, and volunteers, lists of names and home addresses, and other files or material containing private or personal information, the public disclosure of which would violate a pledge of confidentiality and amount to a clearly unwarranted invasion of the privacy of any person to whom the information pertains.

(g) Investigatory files. Included in this category are files compiled for the enforcement of all laws, or prepared in connection with government litigation and adjudicative proceedings, provided however, that such records shall be made available to the extent that their production will not:

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to a fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion of personal privacy;

(4) Disclose the identity of a confidential source, and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful security intelligence investigation, confidential information furnished by confidential source;

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or physical safety of law enforcement personnel.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of portions which are exempt under this section.

[55 FR 50330, Dec. 6, 1990]

APPENDIX 1(A) TO PART 1215—FREEDOM OF INFORMATION ACT REQUEST LETTER (SAMPLE)

Freedom of Information Act Officer
Name of Agency
Address of Agency
City, State, Zip Code

Re: Freedom of Information Act Request.

Dear _____:

This is a request under the Freedom of Information Act.

I request that a copy of the following documents [or documents containing the following information] be provided to me: [identify the documents or information as specifically as possible].

In order to help to determine my status to assess fees, you should know that I am (insert a suitable description of the requester and the purpose of the request).

[Sample requester descriptions:

—a representative of the news media affiliated with the _____ newspaper (magazine, television station, etc.), and this request is made as part of news gathering and not for a commercial use.

—affiliated with an educational or noncommercial scientific institution, and this request is made for a scholarly or scientific purpose and not for a commercial use.

—an individual seeking information for personal use and not for a commercial use.

—affiliated with a private corporation and am seeking information for use in the company's business.]

[Optional] I am willing to pay fees for this request up to a maximum of $_____. If you estimate that the fees will exceed this limit, please inform me first.

[Optional] I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest. [Include a specific explanation.]

Thank you for your consideration of this request.

Sincerely,
Name
Address
City, State, Zip Code
Telephone Number [Optional]

APPENDIX 1(B) TO PART 1215—FREEDOM OF INFORMATION ACT APPEAL LETTER (SAMPLE)

Appeal Officer
Name of Agency
Address of Agency
City, State, Zip Code

Re: Freedom of Information Act Appeal.

Dear_____:

This is an appeal under the Freedom of Information Act.

On (date), I requested documents under the Freedom of Information Act. My request was assigned the following identification number _____. On (date), I received a response to my request in a letter signed by (name of official). I appeal the denial of my request.

[Optional] The documents that were withheld must be disclosed under the FOIA because . . . .

[Optional] I appeal the decision to deny my request for a waiver of fees. I believe that I am entitled to a waiver of fees. Disclosure of the documents I requested is in the public interest because the information is likely to contribute significantly to public understanding of the operation or activities of government and is not primarily in my commercial interest. (Provide details)

[Optional] I appeal the decision to require me to pay review costs for this request. I am not seeking the documents for a commercial use. (Provide details)

[Optional] I appeal the decision to require me to pay search charges for this request. I am a reporter seeking information as part of news gathering and not for commercial use.

Thank you for your consideration of this appeal.

Sincerely,
Name
Address
City, State, Zip Code
Telephone Number [Optional]

(42 U.S.C. 5042(13); 5 U.S.C. 552)

PART 1216—NONDISPLACEMENT OF EMPLOYED WORKERS AND NONIMPAIRMENT OF CONTRACTS FOR SERVICE

Sec.

AUTHORITY: Secs. 402(12), 404(a), 420 of Pub. L. 93–113, 87 Stat. 394, 408, 414.

SOURCE: 40 FR 16209, Apr. 10, 1975, unless otherwise noted.

§ 1216.1–1 Purpose.

This part establishes rules to assure that the services of volunteers are limited to activities which would not otherwise be performed by employed workers and which will not supplant the hiring of, or result in the displacement of, employed workers or impair existing contracts for service. It implements section 404(a) of the Domestic Volunteer Service Act of 1973, Pub. L. 93–113 (the ''Act'').

§ 1216.1–2 Applicability of this part.

(a) All full-time and part-time volunteers assigned, referred or serving pursuant to grants, contracts, or agreements made pursuant to the Act.

(b) All agencies and organizations to which the volunteers in paragraph (a) of this section are assigned, referred or provide services.

§ 1216.1–3 Policy.

(a) Volunteers enrolled or participating in programs referred to in paragraphs (a) and (b) of § 1216.1–2 may not perform any services or duties or engage in activities which would otherwise be performed by an employed worker as part of his assigned duties as an employee.

(b) Volunteer referred to in paragraph (a) of this section may not perform any services or duties or engage in activities which will supplant the hiring of employed workers. This prohibition is violated if, prior to engaging a volunteer, an agency or organization referred to in § 1216.1–2(c) had intended to hire a person to undertake all or a substantial part of the services, duties, or other activities to be provided by the volunteer.

(c) Volunteers referred to in paragraph (a) of this section may not perform any services or duties or engage in activities which result in the displacement of employed workers. Such volunteers may not perform services or duties which have been performed by or were assigned to, any of the following:

(1) Presently employed workers,

(2) Employees who recently resigned or were discharged,

(3) Employees who are on leave (terminal, temporary, vacation, emergency, or sick), or

(4) Employees who are on strike or who are being locked out.

(d) Volunteers referred to in paragraph (a) of this section may not perform any services or duties or engage in activities which impair existing contracts for service. This prohibition is violated if a contract for services is modified or cancelled because an agency or organization referred to in § 1216.1–2(b) engages a volunteer to provide or perform all or a substantial part of any services, duties, or other activities set forth in such contract. The term ''contract for services'' includes but is not limited to contracts, understandings and arrangements, either written or oral, to provide professional, managerial, technical, or administrative services.

(e) Agencies and organizations referred to in § 1216.1–2(b) are prohibited from assigning or permitting volunteers referred to in § 1216.1–2(a) to perform any services or duties or engage in any activities prohibited by paragraphs (a) through (d) of this section.

§ 1216.1–4 Exceptions.

(a) The requirements of § 1216.1–3 are not applicable to the following, or similar, situations:

(1) Funds are unavailable for the employment of sufficient staff to accomplish a program authorized or of a character eligible for assistance under the Act and the activity, service, or duty is otherwise appropriate for the assignment of a volunteer.

(2) Volunteer services are required in order to avoid or relieve suffering threatened by or resulting from major natural disasters or civil disturbances.

(3) Reasonable efforts to obtain employed workers have been unsuccessful due to the unavailability of persons within the community who are able, willing, and qualified to perform the needed activities.

(4) The assignment of volunteers will significantly expand services to a target community over those which could be performed by existing paid staff, and the activity, service or duty is otherwise appropriate for the assignment of a volunteer and no actual displacement of paid staff will occur as a result of the assignment.

(b) For the purposes of paragraphs (a)(1) and (4) of this section, the assignment is not appropriate for the assignment of a volunteer if:

(1) The service, duty, or activity is principally a routine administrative or clerical task. This definition applies only to any service, duty, or activity performed by a volunteer receiving financial support apart from reimbursement for expenses.

(2) The volunteer is not directly in contact with groups or individuals whom the Act is designed to serve or is not performing services, duties, or engaged in activities authorized or of a character eligible for assistance under the Act.

PART 1217—VISTA VOLUNTEER LEADER

Sec.

AUTHORITY: Secs. 104(b) and 420 of Pub. L. 93–113, 87 Stat. 398 and 414.

SOURCE: 39 FR 44203, Dec. 23, 1974, unless otherwise noted.

§ 1217.1 Introduction.

Section 105(a)(1), Part A, of the Domestic Volunteer Service Act of 1973, Pub. L. 93–113, 87 Stat. 398, authorizes the Director of ACTION to pay VISTA volunteers a stipend not to exceed $50 per month and a stipend not to exceed $75 a month in the case of VISTA volunteers who have served for at least a year and have been designated volunteer leaders. Section 105(a)(1) further provides that the selection of volunteer leaders shall be pursuant to standards, established in regulations which the Director shall prescribe, which shall be based upon the experience and special skills and the demonstrated leadership of such persons among volunteers.

§ 1217.2 Establishment of position.

A request for the proposed establishment of VISTA volunteer leader position for a specific project shall be submitted by a sponsor in writing in advance to the appropriate ACTION Regional Director. Specific tasks, responsibilities, qualifications, and the proposed supervisory structure are to be detailed in the request.

§ 1217.3 Qualifications.

A volunteer recommended for a VISTA volunteer leader position must have:

(a) Completed a one-year term as a VISTA volunteer.

(b) Demonstrated ability to work constructively and communicate with volunteers, supervisor/sponsor, and the target population.

(c) Demonstrated ability to work well with and gain acceptance of other volunteers.

(d) Demonstrated ability to provide self-motivation and self-direction, and maturity to accept supervision and direction from supervisor/sponsor.

(e) Sensitivity to the needs and attitudes of others, and exhibit a sincere commitment to the mission of VISTA.

§ 1217.4 Selection procedure.

(a) *Nomination.* Candidates may be nominated in writing to the Regional Director by the Program Officer or the State Program Director in whose area the volunteer serves. The nomination shall include a copy of the completed ACTION Form V–95a, for the Regional Director's review.

(b) *Selection.* VISTA volunteer leaders will be selected by the Regional Director (or his designee). The criteria for selection shall include:

(1) The recommendation of the volunteer by the State Program Director or Program Officer.

(2) An overall rating by the supervisor/sponsor of above average on the ACTION Form V–95a.

(3) A description of specific tasks, responsibilities, qualifications, and the proposed supervisory structure, which justifies the establishment of the VISTA volunteer leader position. A selection decision is final.

(c) *Reenrollment.* VISTA volunteer leaders may be reenrolled in accordance with the VISTA reenrollment and extension policy.

§ 1217.5 Allowances and benefits.

The VISTA volunteer leader shall be entitled to all allowances and benefits of a VISTA volunteer at the level which is consistent with the level for all volunteers on his/her project, except that:

(a) The stipend will be increased from $50 to $75 per month effective on the date of selection of the VISTA volunteer leader.

(b) Support for on-the-job transportation may be increased, consistent with ACTION policy.

§ 1217.6 Roles of volunteers.

VISTA volunteer leaders may have the following roles:

(a) Primary contact with VISTA volunteers on personal and administrative matters.

(b) Aid in communication of VISTA policies to VISTA volunteers.

(c) Encourage and develop VISTA volunteer leadership and initiative on projects.

(d) Aid as a resource in development and conduct of training programs.

(e) Assist sponsor in preparation for arrival of VISTA volunteers, and assist new volunteers in settling-in, housing, orientation, etc.

(f) Aid in the development of meaningful relationship and understanding of individual program concepts with VISTA volunteers and supervisor/sponsor.

(g) Advise supervisor on potential problem areas, and needs of VISTA volunteers.

(h) Aid supervisor/sponsor in the redevelopment of projects to best meet goals and objectives addressing the community's problem(s).

PART 1218—VISTA VOLUNTEERS—HEARING OPPORTUNITY

Sec.

AUTHORITY: Secs. 104(d), 402(14) and 420 of Pub. L. 93–113, 87 Stat. 398, 407 and 414.

SOURCE: 39 FR 43725, Dec. 18, 1974, unless otherwise noted.

§ 1218.1 Introduction.

Section 104(d) of the Domestic Volunteer Service Act of 1973, Pub. L. 93–113, 87 Stat. 398 requires that the Director of ACTION establish a procedure, including notice and an opportunity to be heard, for VISTA volunteers to present views in connection with the terms and conditions of their service.

§ 1218.2 Applicability.

This part applies to all volunteers enrolled under part A of title I of the Domestic Volunteer Service Act of 1973, Pub. L. 93–113, 87 Stat. 396.

§ 1218.3 Policy.

It is ACTION's policy to encourage the free exchange of views between volunteers and staff members with respect to the terms and conditions of the volunteers' service. Ordinarily these exchanges occur in the day-to-day contact between volunteers and staff. However, there are occasions when it is desirable to provide volunteers with an opportunity to present their views with respect to the terms and conditions of their service in a more formal way. The differences between ACTION regions require that the means selected in each region to accomplish this result be appropriate to its particular needs. This regulation provides standards within which regions must establish a procedure to enable volunteers to present their views to be heard with respect to the terms and conditions of their service on a regular basis by appropriate ACTION officials and receive a timely response to their concerns.

§ 1218.4 Standards for regional plan.

Each ACTION Domestic Regional Director shall recommend, after consultation with representative volunteers, sponsors, and other interested persons, the specific procedures to be established for VISTA volunteers to present their views concerning the terms and conditions of their service. Each proposed plan must incorporate the following features:

(a) A free and open opportunity for volunteers to communicate their views to appropriate ACTION regional office officials.

(b) An opportunity for all volunteers to be heard with respect to their views in connection with the terms and conditions of their service by a responsible ACTION regional office official, either personally, or through democratically selected representatives, on a regular basis. The plan must provide such an opportunity to the volunteer at least twice in each year, and provide for notice to volunteers of the time and place of the meeting at which they may be heard.

(c) Appropriate provisions with respect to volunteers' or volunteers' representatives travel expense and per diem which enable the volunteers or their representatives to attend and present their views to the regional office officials at scheduled meetings.

(d) Response to volunteer's views by appropriate ACTION officials in a prescribed period of time.

(e) Summary reports by each Regional Director to the Deputy Associate Director for VISTA and ACTION Education Programs of problems and concerns expressed by volunteers concerning terms and conditions of their service and action taken in response to such problems and concerns.

(f) An opportunity for any volunteer who feels that his/her concerns have not been properly addressed to communicate the same to the Regional Director. Such communication shall be included in the Regional Director's report to the Deputy Associate Director and shall be reviewed by him.

§ 1218.5 Procedures for approval of plan.

Each Regional Director shall submit the plan for his region to the Deputy Associate Director, VISTA and ACTION Education Programs for approval.

Approval by the Deputy Associate Director for VISTA and ACTION Education Programs of the proposed regional plan shall be based upon:

(a) The adequacy of the procedures to provide for systematic and open communication of volunteers' views regarding terms and conditions of their service; and

(b) The adequacy of the procedures to provide for effective and efficient resolution of volunteers' problems or concerns regarding terms and conditions of their service.

§ 1218.6 Freedom to present views.

The expression by a volunteer of his views with respect to the terms and conditions of his service shall not be construed as reflecting on a volunteer's standing, performance or desirability as a volunteer. ACTION intends that its programs be conducted in an atmosphere in which volunteers can speak freely, and frankly discuss problems. Nor shall a volunteer who represents such views be subjected to restraint, interference, coercion, discrimination or reprisal because of presentation of his views.

PART 1219—COMPETITIVE SERVICE ELIGIBILITY

Sec.
1219.1 Introduction.
1219.2 Policy.
1219.3 Procedure.

AUTHORITY: Secs. 415(d) and 420 of Pub. L. 93–113, 87 Stat. 412 and 414.

SOURCE: 39 FR 42915, Dec. 9, 1974, unless otherwise noted.

§ 1219.1 Introduction.

Section 415(d), Title IV, of the Domestic Volunteer Service Act of 1973, Pub. L. 93–113, 87 Stat. 412, provides that VISTA Volunteers who have successfully completed their period of service shall be eligible for appointment in the Federal competitive service in the same manner as Peace Corps Volunteers as prescribed in Executive Order No. 11103 (April 10, 1963). This section further provides that the Director of ACTION shall determine who has successfully completed his period of service in accordance with regulations he shall prescribe.

§ 1219.2 Policy.

Certificates of satisfactory service for the purpose of this order shall be issued only to persons who have completed at least one full year of service as a full-time Volunteer under part A of title I of the Domestic Volunteer Service Act of 1973 (or title VIII of the Economic Opportunity Act of 1964, as amended, 42 U.S.C. 2991–2994d), and who have not been terminated for cause.

§ 1219.3 Procedure.

(a) The Deputy Associate Director for VISTA and Anti-Poverty Programs will ensure that each eligible VISTA Volunteer is promptly notified of his eligibility for competitive service, prior to the completion of his service.

(b) The Deputy Associate Director for VISTA and Anti-Poverty Programs (or his designee) shall, upon the request of a duly recognized representative of any agency in the Executive Branch, certify the VISTA Volunteer's service on ACTION Form A–507.

PART 1220—PAYMENT OF VOLUNTEER LEGAL EXPENSES

Subpart A—General

Sec.
1220.1–1 Introduction.

Subpart B—Criminal Proceedings

1220.2–1 Full-time volunteers.
1220.2–2 Part-time volunteers.
1220.2–3 Procedure.

Subpart C—Civil and Administrative Proceedings

1220.3–1 Full-time volunteers.
1220.3–2 Part-time volunteers.
1220.3–3 Procedure.

AUTHORITY: Secs. 419 and 420 of Pub. L. 93–113, 87 Stat. 413 and 414.

SOURCE: 40 FR 28800, July 9, 1975, unless otherwise noted.

Subpart A—General

§ 1220.1–1 Introduction.

Section 419 of the Domestic Volunteer Service Act of 1973 (the Act), Pub. L. 93–113, 87 Stat. 413, authorizes the Director of ACTION to pay expenses incurred in judicial and administrative

proceedings for the defense of full-time or part-time volunteers serving under the Act. These include counsel fees, court costs, bail or other expenses incidental to the volunteer's defense. For part-time volunteers, section 419 provides that the proceeding must arise directly out of the performance of activities pursuant to the Act.

Subpart B—Criminal Proceedings

§ 1220.2–1 Full-time volunteers.

(a)(1) ACTION will pay all reasonable expenses for defense of full-time volunteers up to and including arraignment in Federal, state, and local criminal proceedings, except in cases where it is clear that the charged offense results from conduct which is not related to his service as a volunteer.

(2) Situations where conduct is clearly unrelated to a volunteer's service are those that arise either:

(i) In a period prior to volunteer service,

(ii) Under circumstances where the volunteer is not at his assigned volunteer project location, such as during periods of administrative, vacation, or emergency leave, or

(iii) When he is at his volunteer station, but the activity or action giving rise to the charged offense is clearly not part of, or required by, such assignment.

(b) Reasonable expenses in criminal proceedings beyond arraignment may be paid in cases where:

(1) The charge against the volunteer relates to his assignment or status as a volunteer, and not his personal status or personal matters. A charge relating to a volunteer's assignment arises out of any activity or action which is a part of, or required by, such assignment. A charge relating to a volunteer's status is motivated exclusively by the fact that a defendant is a volunteer.

(2) The volunteer has not admitted a willful or knowing violation of law, and

(3) The charge(s) is not a minor misdemeanor, such as a minor vehicle violation for which a fine or bail forfeiture will not exceed $100.

(c) Notwithstanding the foregoing, there may be situations in which the criminal proceeding results from a situation which could give rise to a civil claim under the Federal Tort Claims Act. In such situations, the Justice Department may agree to defend the volunteer. In those cases, unless there is a conflict between the volunteer's interest and that of the government, ACTION will not pay for additional private representation for the volunteer.

§ 1220.2–2 Part-time volunteers.

(a) With respect to a part-time volunteer, ACTION will reimburse a sponsor for the reasonable expenses it incurs for the defense of the volunteer in Federal, state and local criminal proceedings, including arraignment, only under the following circumstances:

(1) The proceeding arises directly out of the volunteer's performance of activities pursuant to the Act;

(2) The volunteer receives, or is eligible to receive, compensation, including allowances, stipend, or reimbursement for out-of-pocket expenses, under an ACTION grant project; and

(3) The conditions specified in paragraphs (b) (2) and (3) in § 1220.2–1 are met.

(b) In certain circumstances volunteers who are ineligible for reimbursement of legal expenses by ACTION may be eligible for representation under the Criminal Justice Act (18 U.S.C. 3006A).

§ 1220.2–3 Procedure.

(a) Immediately upon the arrest of any volunteer under circumstances in which the payment of bail to prevent incarceration or other serious consequences to the volunteer or the retention of an attorney prior to arraignment is necessary and is covered under § 1220.2–1 or § 1220.2–2, sponsors shall immediately notify the appropriate ACTION state office or if the state office cannot be reached, the appropriate regional office. The regional office shall provide each sponsor with a 24-hour telephone number.

(b) Immediately after notification of the appropriate office, and with the approval thereof, the sponsor shall advance up to $500 for the payment of bail or such other legal expenses as are necessary prior to arraignment to prevent the volunteer from being incarcerated. In the event it is subsequently determined that ACTION or a sponsor is not

responsible under this policy for the volunteer's defense, any such advance may be recovered directly from the volunteer or from allowances, stipends, or out-of-pocket expenses which are payable or become payable to the volunteer. In the case of a grassroots sponsor of full-time volunteers which is not able to provide the $500 the ACTION state or regional office shall immediately make such sum available to the sponsor.

(c) Immediately upon receipt of notification from the sponsor, the state or regional office shall notify the General Counsel, giving all facts and circumstances at that time known to such office. Thereafter the office shall cooperate with the General Counsel in making an investigation of all surrounding facts and circumstances and shall provide such information immediately to the General Counsel.

(d) The General Counsel shall, upon notification by the state or regional office, determine the extent to which ACTION will provide funds for the volunteer's defense or reimburse a sponsor for funds it spends on the volunteer's behalf. Included in this responsibility shall be the negotiation of fees and approval of other costs and expenses. State and regional offices are not authorized to commit ACTION to the payment of volunteers' legal expenses or to reimburse a sponsor except as provided above, without the express consent of the General Counsel. Additionally, the General Counsel shall, in cases arising directly out of the performance of authorized project activities, ascertain whether the services of the United States Attorney can be made available to the volunteer.

(e) The sponsor and the state and regional office shall have a continuing responsibility for cooperation and coordination with the Office of General Counsel during the pendency of any such litigation, and of notifying the General Counsel of any facts and circumstances which come to the attention of such office or the sponsor which affects such litigation.

Subpart C—Civil and Administrative Proceedings

§1220.3–1 Full-time volunteers.

ACTION will pay reasonable expenses incurred in the defense of full-time volunteers in Federal, state, and local civil judicial and administrative proceedings where:

(a) The complaint or charge against the volunteer is directly related to his volunteer service and not to his personal activities or obligations.

(b) The volunteer has not admitted willfully or knowingly pursuing a course of conduct which would result in the plaintiff or complainant initiating such a proceeding, and

(c) If the judgment sought involves a monetary award, the amount sought exceeds $100.

§1220.3–2 Part-time volunteers.

ACTION will reimburse sponsors for the reasonable expenses incidental to the defense of part-time volunteers in Federal, state and local civil judicial and administrative proceedings where:

(a) The proceeding arises directly out of the volunteer's performance of activities pursuant to the Act;

(b) The volunteer receives or is eligible to receive compensation, including allowances, stipend, or reimbursement for out-of-pocket expenses under an ACTION grant; and

(c) The conditions specified in paragraphs (b) and (c) in §1220.3–1 are met.

§1220.3–3 Procedure.

Immediately upon the receipt by a volunteer of any court papers or administrative orders making him a part to any proceeding covered under §1220.3–1 or §1220.3–2, the volunteer shall immediately notify his sponsor who in turn shall notify the appropriate ACTION state office. The procedures referred to in §1220.2–3, paragraphs (c) through (e), shall thereafter be followed as appropriate.

PART 1222—PARTICIPATION OF PROJECT BENEFICIARIES

Sec.

AUTHORITY: Secs. 106 and 420 of Pub. L. 93–113, 87 Stat. 398 and 414.

SOURCE: 40 FR 57217, Dec. 8, 1975, unless otherwise noted.

§ 1222.1 Purpose.

The purpose of these regulations is to prescribe requirements for the establishment of a continuing mechanism for the meaningful participation of project beneficiaries in the planning, development, and implementation of project activities utilizing full-time volunteers authorized under Title I of the Domestic Volunteer Service Act of 1973, Pub. L. 93–113. This policy specifically implements Section 106, Title I, Pub. L. 93–113.

§ 1222.2 Applicability.

These regulations apply to all full-time volunteer programs and projects under title I, Pub. L. 93–113, including grant programs. Included in these programs are VISTA (part A), University Year for ACTION (UYA) (part B), ACTION Cooperative Volunteers (ACV) and Program for Local Services (PLS) (part C).

§ 1222.3 Policy.

(a) Each potential project sponsor shall establish an advisory group for the project, to include substantial membership of potential project beneficiaries or, to the extent feasible, their democratically chosen representatives, prior to the submission of an application to ACTION for volunteers.

(b) The term ''substantial'' means, in this case, a sufficient number of appropriate persons to assure that the concerns and points of view of the potential project beneficiaries are adequately presented and considered in the deliberations of the group. The phrase ''project beneficiaries'' means, in this case, recipients of benefits accruing directly from project activities as conducted by ACTION Volunteers.

(c) Potential sponsoring organizations that have an established governing, policy, or advisory group whose membership is composed of at least 50% of members of the beneficiary population are not required to establish a separate project advisory group for the purposes of these regulations.

§ 1222.4 Advisory group responsibilities.

The advisory group shall have the following responsibilities for the intent and purposes of these requirements:

(a) To the extent practical, assist the sponsor in the initial planning of a new project proposal and in the planning of a continuation project application.

(b) To review and provide written comments concerning any project application prior to the submission of the application to ACTION. A copy of such comments shall accompany each application to ACTION.

(c) To meet with the sponsoring organization's staff at periodic intervals, but no less than twice per project year, for the purpose of reviewing and commenting on the development and implementation of the project. Such project review and commentary should be directed toward the adequacy of the project to meet the identified needs of the project beneficiaries.

(d) To submit, if it so chooses, written reports and/or copies of minutes of its meetings to the sponsor to accompany the Sponsor's Quarterly Program Report (A–568) submitted to the appropriate ACTION regional office.

§ 1222.5 Advisory group expenses.

As permitted by law, ACTION regional staff may pay for certain incidental out-of-pocket expenses incurred by the advisory group in connection with its responsibilities under § 1222.4.

§ 1222.6 Sponsor's responsibilities.

The sponsor or potential sponsor shall furnish the following evidence of the advisory group's participation in the planning, development, and implementation of the project:

(a) Each new application to ACTION for volunteers shall contain a statement describing how the advisory group has participated in the planning of the project proposal. This statement shall be signed by an authorized representative of the Advisory group (see

§ 1222.4–2). For continuation project applications, a written statement shall be included which specifies how the advisory group complied with its responsibilities under § 1222.4 of these regulations. This statement shall be signed by an authorized representative of the advisory group (see § 1222.4–2 and 3).

(b) In each Sponsor's Quarterly Program Report (A–568), the sponsor shall include a brief statement describing the extent to which the advisory group was involved in the continuing development and implementation of the project.

PART 1224—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Sec.

AUTHORITY: Pub. L. 93–579, 5 U.S.C. 552a.

SOURCE: 42 FR 54286, Oct. 5, 1977, unless otherwise noted.

§ 1224.1–1 Purpose.

The purpose of this part is to set forth the basic policies of ACTION governing the maintenance of systems of records containing personal information as defined in the Privacy Act (5 U.S.C. 552a). Records included in this part are those described in aforesaid Act and maintained by ACTION and/or any component thereof.

§ 1224.1–2 Policy.

It is the policy of ACTION to protect, preserve and defend the right of privacy of any individual as to whom the agency maintains personal information in any system records and to provide appropriate and complete access to such records including adequate opportunity to correct any errors in said records. It is further the policy of the agency to maintain its records in such a fashion that the information contained therein is and remains material and relevant to the purposes for which it is received in order to maintain its records with fairness to the individuals who are the subject of such records.

§ 1224.1–3 Definitions.

(a) *Record* means any document or other information about an individual maintained by the agency whether collected or grouped and including but not limited to information regarding education, financial transactions, medical history, criminal or employment history, or any other personal information which contains the name or other personal identification number, symbol, etc. assigned to such individual.

(b) *System of Records* means a group of any records under the control of the agency from which information is retrieved by use of the name of an individual or by some identifying number, symbol, or other identifying particular of whatsoever kind or nature.

(c) *Routine Use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(d) The term *agency* means ACTION and/or any component thereof.

(e) The term *individual* means any citizen of the United States or an alien lawfully admitted to permanent residence.

(f) The term *maintain* includes the maintenance, collection, use or dissemination of any record.

§ 1224.1–4 Disclosure of records.

The agency will not disclose any personal information from systems of records it maintains to any individual other than the individual to whom the record pertains, or to another agency, without the express written consent of

the individual to whom the record pertains, or his agent or attorney, except in the following instances:

(a) To officers or employees of ACTION having a need for such record in the official performance of their duties.

(b) With respect to records which should follow an employee in transfer situations, to the personnel office of a different agency as a result of a transfer or a potential transfer of the individual to whom the record pertains.

(c) When required under the provisions of the Freedom of Information Act (5 U.S.C. 552).

(d) For routine uses as appropriately published in the annual notice of the FEDERAL REGISTER.

(e) To the Bureau of the Census for uses pursuant to Title 13.

(f) To an individual or agency having a proper need for such record for statistical research provided that such record is transmitted in a form which is not individually identifiable and that an appropriate written statement is obtained from the person to whom the record is transmitted stating the purpose for the request and a certification under oath that the records will be used only for statistical purposes.

(g) To the National Archives of the United States as a record of historical value under rules and regulations of the Archives as may be established by the Administrator of General Services or his designee.

(h) To an agency or instrumentality of any governmental jurisdiction within the control of the United States for civil or criminal law enforcement purposes provided however that the head of any such agency instrumentality has made a written request for such records specifying the particular portion desired and the law enforcement activity for which the record is sought. Such a record may also be disclosed by the agency to the law enforcement agency on its own initiative in situations in which criminal conduct is suspected provided that such disclosure has been established as a routine use or in situations in which the misconduct is directly related to the purpose for which the record is maintained.

(i) In emergency situations upon a showing of compelling circumstances affecting the health or safety of any individual provided that after such disclosure notification of such disclosure must be promptly sent to the last known address of the individual to whom the record pertains.

(j) To either House of Congress or to a subcommittee or committee (joint or of either house) to the extent the subject matter falls within their jurisdiction.

(k) To the comptroller general or any of his authorized representatives in the course of the performance of his duties of that of the General Accounting Office.

(l) Pursuant to an order of a court of competent jurisdiction provided that if any such record is disclosed under such compulsory legal process and subsequently made public by the court which issued it, the agency must make a reasonable effort to notify the individual to whom the record pertains of such disclosure.

§ 1224.1–5 Annual notices.

The agency shall publish annually a notice of all systems of records maintained by it as defined herein in the format prescribed by the General Services Administration in the FEDERAL REGISTER, *Provided, however,* That such publication shall not be made for those systems of records maintained by other agencies though in the temporary custody of this agency.

§ 1224.1–5a New uses of information.

At least 30 days prior to publication of information under the preceding section, the agency shall publish in the FEDERAL REGISTER a notice of its intention to establish any new routine use of any system of records maintained by it with an opportunity for public comments on such use. Such notice shall contain the following:

(a) The name of the system of records for which the routine use is to be established.

(b) The authority for the system.

(c) The purpose for which the record is to be maintained.

(d) The proposed routine use(s).

(e) The purpose of the routine use(s).

(f) The categories of recipients of such use. In the event of any request for an addition to the routine uses of

the systems which the agency maintains, such request may be sent to the following officer: Director, A&F/AS, ACTION, 806 Connecticut Avenue NW., Washington, DC 20525.

§ 1224.1–6 Reports regarding changes in systems.

The agency shall provide to Congress, the Office of Management and Budget, and the Privacy Protection Commission advance notice of any proposal to establish or alter any system of records as defined herein. This report will be submitted in accord with guidelines to be provided by the Office of Management and Budget.

§ 1224.1–7 Use of social security account number in records systems. [Reserved]

§ 1224.1–8 Rules of conduct.

(a) The Head of the agency shall assure that all persons involved in the design, development operation or maintenance of any systems of records as defined herein are informed of all requirements necessary to protect the privacy of individuals who are the subject of such records. All employees shall be informed of all implications of the Act in this area including the criminal penalties provided under 5 U.S.C. 552a and the fact that agency may be subject to civil suit for failure to comply with the provisions of the Privacy Act and these regulations.

(b) The Head of the agency shall also ensure that all personnel having access to records receive adequate training in the protection of the security of personal records and that adequate and proper storage is provided for all such records with sufficient security to assure the privacy of such records.

§ 1224.1–9 Records systems—Management and control.

(a) The Director of Administrative Services (A&F) shall have overall control and supervision of the security of all records keeping systems and shall be responsible for monitoring the security standards set forth in these regulations.

(b) A designated official (System Manager) shall be named who shall have management responsibility for each record system maintained by the agency and who shall be responsible for providing protection and accountability for such records at all times and for insuring that such records are secured in appropriate containers whenever not in use or in the direct control of authorized personnel.

§ 1224.1–10 Security of records systems—Manual and automated systems.

The Head of the agency has the responsibility of maintaining adequate technical, physical, and security safeguards to prevent unauthorized disclosure or destruction of manual and automatic record systems. These security safeguards shall apply to all systems in which identifiable personal data are processed or maintained including all reports and outputs from such systems which contain identifiable personal information. Such safeguards must be sufficient to prevent negligent, accidental, or unintentional disclosure, modification or destruction of any personal records or data and must furthermore minimize to the extent practicable the risk that skilled technicians or knowledgeable persons could improperly obtain access to modify or destroy such records or data and shall further insure against such casual entry by unskilled persons without official reasons for access to such records or data.

(a) *Manual systems.* (1) Records contained in records systems as defined herein may be used, held or stored only where facilities are adequate to prevent unauthorized access by persons within or without the agency.

(2) All records systems when not under the personal control of the employees authorized to use same must be stored in an appropriate metal filing cabinet. Where appropriate, such cabinet shall have three position dial-type combination lock, and/or be equipped with a steel lock bar secured by a GSA approved changeable combination padlock or in some such other securely locked cabinet as may be approved by GSA for the storage of such records. Certain systems are not of such confidential nature that their disclosure would harm an individual who is the subject of such record. Records in this category shall be maintained in steel

cabinets without the necessity of combination locks.

(3) Access to and use of systems of records shall be permitted only to persons whose official duties require such access within the agency, for routine uses as defined in subpart B herein as to any given system, or for such other uses as may be provided herein.

(4) Other than for access within the agency to persons needing such records in the performance of their official duties or routine users as defined in subpart B herein or such other uses as provided herein, access to records within systems of records shall be permitted only to the individual to whom the record pertains or upon his or her written request to a designated personal representative.

(5) Access to areas where records systems are stored will be limited to those persons whose official duties require work in such areas and proper accountings of removal of any records in storage areas in the form directed by the Director, A&F/AS, shall be maintained at all times.

(6) The agency shall assure that all persons whose official duties who require access to and use of records contained in records systems are adequately trained to protect the security and privacy of such records.

(7) The disposal and destruction of records within records systems shall be in accord with rules promulgated by the General Services Administration.

(b) *Automated systems.* (1) Identifiable personal information may be processed, stored or maintained by automatic data systems only where facilities or conditions are adequate to prevent unauthorized access to such system in any form. Whenever such data whether contained in punch cards, magnetic tapes or discs are not under the personal control of an authorized person such information must be stored in a metal filing cabinet having a built-in three postion combination lock, a metal filing cabinet equipped with a steel lock bar secured with a GSA approved combination padlock, or in adequate containers or in a secured room or in such other facility having greater safeguards than those provided for herein.

(2) Access to and use of identifiable personal data associated with automated data systems shall be limited to those persons whose official duties require such access. Proper control of personal data in any form associated with automated data systems shall be maintained at all times including maintenance of accountability records showing disposition of input and output documents.

(3) All persons whose official duties require access to processing and maintenance of identifiable personal data and automated systems shall be adequately trained in the security and privacy of personal data.

(4) The disposal and disposition of identifiable personal data and automated systems shall be carried on by shredding, burning or in the case of tapes or discs, degaussing, in accord with any regulations now or hereafter proposed by the GSA or other appropriate authority.

§ 1224.1–11 Accounting for disclosure of records.

Each office maintaining a system of records shall account for all records within such system by keeping a written log in the form prescribed by the Director, A&F/AS, containing the following information:

(a) The date, nature, and purpose of each disclosure of a record to any person or to another agency. Disclosures made to employees of the agency in the normal course of their official duties, or pursuant to the provisions of the Freedom of Information Act need not be accounted for.

(b) Such accounting shall contain the name and address of the person or agency to whom the disclosure was made.

(c) The accounting shall be maintained in accord with a system approved by the Director, A&F/AS, as sufficient for the purpose but in any event sufficient to permit the construction of a listing for all disclosures at appropriate periodic intervals.

(d) The accounting shall reference any justification or basis upon which any release was made including any written documentation required when records are released for statistical or law enforcement purposes under the

provisions of subsection (b) of the Privacy Act of 1974 (5 U.S.C. 552a).

(e) For the purpose of this part, the system of accounting for disclosures is not a system of records under the definitions hereof and no accounting need be maintained for the disclosure of accounting of disclosures.

§ 1224.1–12 Contents of records systems.

The agency shall maintain in any records contained in any records system hereunder only such information about an individual as is accurate, relevant, and necessary to accomplish the purpose for which the agency acquired the information as authorized by statute or Executive Order.

(a) In situations in which the information may result in adverse determinations about such individuals' rights, benefits and privileges under any Federal program, all information placed in records systems shall, to the greatest extent practicable, be collected from the individual to whom the record pertains.

(b) Each form or other document which an individual is expected to complete in order to provide information for any records system shall have appended thereto, or in the body of the document:

(1) An indication of the authority authorizing the solicitation of the information and whether the provision of the information is mandatory or voluntary.

(2) The purpose or purposes for which the information is intended to be used.

(3) Routine uses which may be made of the information and published pursuant to § 1224.1–6 of this regulation.

(4) The effect on the individual if any of not providing all or part of the required or requested information.

(c) Records maintained in any system of record used by the agency to make any determination about any individual shall be maintained with such accuracy, relevancy, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the making of any determination about such individual, provided however, that the agency shall not be required to update or keep current retired records.

(d) Before disseminating any record about any individual to any person other than an agency, unless the dissemination is made pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552) the agency shall make reasonable efforts to assure that such records are, or were at the time they were collected, accurate, complete, timely and relevant for agency purposes.

(e) Under no circumstances shall the agency maintain any record about any individual with respect to or describing how such individual exercises rights guaranteed by the first amendment of the Constitution of the United States unless expressly authorized by statute or by the individual about whom the record is maintained, or unless pertinent to and within the scope of an authorized law enforcement activity.

(f) In the event any record is disclosed as a result of the order of a court of appropriate jurisdiction, the agency shall make reasonable efforts to notify the individual whose record was so disclosed after the process becomes a matter of public record.

§ 1224.1–13 Access to records.

(a) Upon request of any individual about whom a record is maintained addressed to the Director of Administrative Services, 806 Connecticut Avenue NW., Washington, DC 20525, in person during regular business hours, or by mail, access to his record or to any information contained therein shall be provided.

(b) If the request is made in person, such individual may, upon his request, be accompanied by a person of his choosing to review the record and shall be provided an opportunity to have a copy made of all or any record about such individual.

(c) A record may be disclosed to a representative chosen by the individual as to whom a record is maintained upon proper written consent of such individual.

(d) Request made in person will be promptly complied with if the records sought are in the immediate custody of ACTION. Mailed requests or personal requests for documents in storage or otherwise not immediately available,

will be acknowledged within ten working days, and the information requested will be promptly provided thereafter.

(e) With regard to any request for disclosure of record the following procedure shall apply:

(1) Medical or psychological records shall be disclosed to an individual unless in the judgment of the agency, access to such records might have an adverse effect upon such individual. When such determinaion has been made, the agency may require that the information be disclosed only to a physician chosen by the requesting individual. Such physician shall have full authority to disclose all or any portion of such record to the requesting individual in the exercise of his professional judgment.

(2) Test material and copies of certificates or other lists of eligibles or any other listing, the disclosure of which would violate the privacy of any other individual, or be otherwise proscribed by the provision of the Privacy Act of 1974, shall be removed from the record before disclosure to any individual to whom the record pertains.

§ 1224.1–14 Specific exemptions.

Records or portions of records specified below shall be exempt from disclosure provided however that no such exemption shall apply to the provisions of § 1224.1–16(d)(3) hereof (informing prior recipient of corrected or disputed records), § 1224.1–12(a) (collecting information directly from the individual to whom it pertains); § 1224.1–12(b) (informing individuals asked to supply information of the purposes for which it is collected and whether it is mandatory); § 1224.1–12(c) (maintaining records with accuracy, completeness, etc. as reasonably necessary for agency purposes); § 1224.1–12(f) (notifying the subjects of records disclosed under compulsory court process); § 1224.1–16(g) (civil remedies). With the above exceptions the following material shall be exempt from disclosure to the extent indicated:

(a) Material considered classified and exempt from disclosure under the provisions of section 552(b)(1) of the Freedom of Information Act (5 U.S.C. 552).

(b) Investigatory material compiled for the purposes of law enforcement provided, however, that if such information is to be used for the basis for denial of any right, privilege or benefit to which such individual would be entitled by Federal law or otherwise, such material shall be provided to the such individual except to the extent necessary to protect the identity of a source who furnished information to the government under an express promise that his or her identity would be held in confidence, or prior to the effective date of the Privacy Act of 1974, under an implied promise of such source.

(c) Required by statute to be maintained and used solely as statistical records.

(d) Investigatory material compiled solely for the purpose of determining suitability, eligibility or qualification for service as an employee or volunteer or for the obtaining of a Federal contract or for access to classified information; *Provided, however,* that such material shall be disclosed to the extent possible without revealing the identity of a source who furnished information to the government under an express promise of the confidentiality of his identity or, prior to the effective date of the Privacy Act of 1974, under an implied promise of such confidentiality of identity.

(e) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, disclosure of which would compromise the objectivity or fairness of the testing or examination process.

(f) An individual shall not have a right of access to any information compiled by the agency in reasonable anticipation of a civil action or proceeding.

The above specific exemptions from disclosure are made for the purpose of protecting the confidentiality of classified information, sources who furnish information for law enforcement purposes or selection purposes for volunteer service or employment, and to protect the integrity of any system of tests or examinations for Federal service or advancement therein.

§ 1224.1–15 Identification of requestors.

The agency shall require reasonable identification of all individuals who request access to records to assure that records are disclosed to the proper person.

(a) In the event an individual requests disclosure in person, such individual shall be required to show an identification card such as a drivers license etc., containing a photo and a sample signature of such individual. Such individual may also be required to sign a statement under oath as to his or her identity acknowledging that he or she is aware of the penalties for improper disclosure under the provisions of the Privacy Act of 1974.

(b) In the event that disclosure is requested by mail, the agency may request such information as may be necessary to reasonably assure that the individual making such request is properly identified. In certain cases, the agency may require that a mail request be notarized with an indication that the notary received an acknowledgment of identity from the individual making such request.

(c) In the event an individual is unable to provide suitable documentation or identification, the agency may require a signed notarized statement asserting the identity of the individual and stipulating that the individual inderstands that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to $5,000.

(d) In the event a requestor wishes to be accompanied by another person while reviewing his or her records, the agency may require a written statement authorizing discussion of his or her records in the presence of the accompanying representative or other persons.

§ 1224.1–16 Amendment of records and appeals with respect thereto.

A request for inspection of any record shall be made to the Director, A&F/Administrative Services, 806 Connecticut Avenue NW., Washington, DC 20525. Such request may be made by mail or in person provided however that requests made in person may be required to be made upon a form to be provided by the Director of Administrative Services. The Director of Administrative Services shall keep a current list of systems of records maintained by the agency and published in accordance with the provisions of these regulations. Requests as to record systems maintained in Regional Offices may be addressed to the appropriate Regional Office, Attention the Regional Records Officer, in person or by mail. A requesting individual may request that the agency compile all records pertaining to such individual at any named Regional Office or at the Central Office in Washington, DC, for such individual's inspection and/or copying. In the event an individual makes such request for a compilation of all records pertaining to him in various locations, appropriate time for such compilation shall be provided as may be necessary to promptly comply with such requests.

Any such requests should contain, at a minimum, identifying information needed to locate any given record and a brief description of the item or items of information required in the event the individual wishes to see less than all records maintained about him.

(a) In the event an individual after examination of his record desires to request an amendment of such records, he may do so by addressing such request to the Director of Administrative Services. The Director of Administrative Services shall provide assistance in preparing any such amendment upon request and a written acknowledgement of receipt of such request within 10 working days from the receipt thereof from the individual who requested the amendment. Such acknowledgment may, if necessary, request any additional information needed to make a determination with respect to such request. If the agency makes a determination to comply with such request within such 10-day period, no written acknowledgement is necessary, provided however that a certification of such change shall be provided to such individual within such period.

(b) Promptly after acknowledgment of the receipt of a request for an amendment the agency shall take one of the following actions:

(1) Make any corrections of any portion of the record which the individual believes is not accurate, relevant, timely or complete.

(2) Inform the individual of its refusal to amend the record in accord with the request together with the reason for such refusal and the procedures established for requesting review of such refusal by the head of the agency or his designee. Such notice shall include the name and business address of such official.

(3) Refer the request to the agency that has control of and maintains the record in those instances where the record requested remains the property of the controlling agency and not of ACTION.

(c) In reviewing a request to amend the record the agency shall assess the accuracy, relevance, timeliness and completeness of the record with due and appropriate regard for fairness to the individual about whom the record is maintained. In making such determination, the agency shall consult criteria for determining record quality published in pertinent chapters of the Federal Personnel Manual and to the extent possible shall accord therewith.

(d) In the event the agency agrees with the individual's request to amend such record, it shall:

(1) Advise the individual in writing;

(2) Correct the record accordingly; and

(3) Advise all previous recipients of a record which was corrected of the correction and its substance.

(e) In the event the agency, after an initial review of the request to amend a record, disagrees with all or a portion of it, the agency shall:

(1) Advise the individual of its refusal and the reasons therefore;

(2) Inform the individual that he or she may request further review in accord with the provisions of these regulations; and

(3) The name and address to whom the request should be directed.

(f) In the event an individual requestor disagrees with the initial agency determination, he or she may appeal such determination to the Deputy Director of the Agency or his designee. Such request for review must be made within 30 days after receipt by the requestor of the initial refusal to amend.

(g) If after review the Deputy Director or his designee refuses to amend the record as requested he shall advise the individual requester of such refusal and the reasons for same; of his or her right to file a concise statement of the reasons for disagreeing with the decision of the agency in the record; of the procedures for filing a statement of disagreement and of the fact that such statement so filed will be made available to anyone to whom the record is subsequently disclosed together with a brief statement of the agency summarizing its reasons for refusal, if the agency decides to place such brief statement in the record. The agency shall have the authority to limit the length of any statement to be filed, such limit to depend upon the record involved. The agency shall also inform such individual that prior recipients of the disputed record will be provided a copy of both statements of dispute to the extent that the accounting of disclosures has been maintained and of the individual's right to seek judicial review of the agency's refusal to amend the record.

(h) If after review the official determines that the record should be amended in accordance with the individual's request the agency shall proceed as provided above in the event a request is granted upon initial demand.

(i) Final agency determination of an individual's request for a review shall be concluded within 30 working days from the initial request excluding the period of time between receipt by such individual of the initial denial and his or her filing of a request for review provided however that the Deputy Director or his designee may determine that fair and equitable review cannot be made within that time. If such circumstances occurs, the individual shall be notified of the additional time required in writing and of the approximate date on which determination of the review is expected to be completed.

§ 1224.1–17 Denial of access and appeals with respect thereto.

In the event that the agency finds it necessary to deny any individual access to a record about such individual

pursuant to provisions of the Privacy Act or of these regulations, a response to the original request shall be made in writing within ten working days from the date of such initial request. The denial shall specify the reasons for such refusal or denial and advise the individual of the reasons therefore, and of his or her right to an appeal within the agency and/or judicial review under the provisions of the Privacy Act.

(a) In the event an individual desires to appeal any denial of access, he may do so in writing by addressing such appeal to the attention of the Deputy Director, ACTION, c/o the Director, AF/Administrative Services, 806 Connecticut Avenue NW., Washington, DC 20525. Although there is no time limit for such appeals, ACTION shall be under no obligation to maintain copies of original requests or responses thereto beyond 180 days from the date of the original request.

(b) The Deputy Director, or his designee, shall review a request from a denial of access and shall make a determination with respect to such appeal within 20 days after receipt thereof. Notice of such determination shall be provided to the individual making the request in writing. If such appeal is denied in whole or in part, such notice shall include notification of the right of the person making such requests to have judicial review of the denial as provided in the Privacy Act (5 U.S.C. 552a).

§ 1224.1–18 Fees.

No fees shall be charged for search time or for any other time expended by the agency to produce a record. Copies of records may be charged for at the rate of 10 cents per page provided that one copy of any record shall be provided free of charge.

§ 1224.1–19 Inspector General exemptions.

Pursuant to sections (j) and (k) of the Privacy Act of 1974, ACTION has promulgated the following exemptions to specified provisions of the Privacy Act:

(a) Pursuant to, and limited by, 5 U.S.C. 552a(j)(2), the system of records maintained by the Office of the Inspector General of ACTION that contains the Investigative Files shall be exempted from the provisions of 5 U.S.C. 552a, except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i), and 45 CFR 1224.1–12, 1224.1–13, 1224.1–15, 1224.1–16, 1224.1–17, and 1224.1–18, insofar as the system contains information pertaining to criminal law enforcement investigations.

(b) Pursuant to, and limited by, 5 U.S.C. 552a(k)(2), the system of records maintained by the Office of the Inspector General of ACTION that contains the Investigative Files shall be exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f), and 45 CFR 1224.1–12, 1224.1–13, 1224.1–15, 1224.1–16, 1224.1–17, and 1224.1–18, insofar as it contains investigatory materials compiled for law enforcement purposes.

[57 FR 45326, Oct. 1, 1992]

PART 1225—VOLUNTEER DISCRIMINATION COMPLAINT PROCEDURE

Subpart A—General Provisions

Sec.

Subpart B—Processing Individual Complaints of Discrimination

Subpart C—Processing Class Complaints of Discrimination

AUTHORITY: Secs. 417, 402(14), 420, Pub. L. 93–113, 87 Stat. 398, 407, and 414; Sec. 5(a),

Pub. L. 87–293, 75 Stat. 613; Executive Order 12137, issued May 16, 1979.

SOURCE: 46 FR 1609, Jan. 6, 1981, unless otherwise noted.

Subpart A—General Provisions

§ 1225.1 Purpose.

The purpose of this part is to establish a procedure for the filing, investigation, and administrative determination of allegations of discrimination based on race, color, national origin, religion, age, sex, handicap or political affiliation, which arise in connection with the recruitment, selection, placement, service, or termination of Peace Corps and ACTION applicants, trainees, and Volunteers for full-time service.

§ 1225.2 Policy.

It is the policy of Peace Corps and ACTION to provide equal opportunity in all its programs for all persons and to prohibit discrimination based on race, color, national origin, religion, age, sex, handicap or political affiliation, in the recruitment, selection, placement, service, and termination of Peace Corps and ACTION Volunteers. It is the policy of Peace Corps and ACTION upon determining that such prohibited discrimination has occurred, to take all necessary corrective action to remedy the discrimination, and to prevent its recurrence.

§ 1225.3 Definitions.

Unless the context requires otherwise, in this Part:

(a) *Director* means the Director of Peace Corps for all Peace Corps applicant, trainee, or Volunteer complaints processed under this part, or the Director of ACTION for all domestic applicant, trainee, or Volunteer complaints processed under this part. The term shall also refer to any designee of the respective Director.

(b) *EO Director* means the Director of the Equal Opportunity Division of the Office of Compliance, ACTION. The term shall also refer to any designee of the EO Director.

(c) *Illegal discrimination* means discrimination on the basis of race, color, national origin, religion, age, sex, handicap or political affiliation as defined in section 5(a) of the Peace Corps Act (22 U.S.C. 2504); section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000–16); Title V of the Rehabilitation Act of 1973 (29 U.S.C. 791, et seq.); and the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.). Further clarification of the scope of matters covered by this definition may be obtained by referring to the following regulations: Sex Discrimination: 29 CFR part 1604; Religious Discrimination: 29 CFR part 1605; National Origin Discrimination: 29 CFR part 1606; Age Discrimination: 45 CFR part 90; Handicap Discrimination: 29 CFR 1613.701 through 1613.707.

(d) *Applicant* means a person who has submitted to the appropriate agency personnel a completed application required for consideration of eligibility for Peace Corps or ACTION volunteer service. ''Applicant'' may also mean a person who alleges that the actions of agency personnel precluded him or her from submitting such an application or any other information reasonably required by the appropriate personnel as necessary for a determination of the individual's eligibility for volunteer service.

(e) *Trainee* means a person who has accepted an invitation issued by Peace Corps or ACTION and has registered for Peace Corps or ACTION training.

(f) *Volunteer* means a person who has completed successfully all necessary training; met all clearance standards; has taken, if required, the oath prescribed in either section 5(j) of the Peace Corps Act (22 U.S.C. 2504), or section 104(c) of the Volunteer Service Act of 1973, as amended (42 U.S.C. 104(c)) and has been enrolled as a full-time Volunteer by the appropriate agency.

(g) *Complaint* means a written statement signed by the complainant and submitted to the EO Director. A complaint shall set forth specifically and in detail:

(1) A description of the Peace Corps or ACTION management policy or practice, if any, giving rise to the complaint;

(2) A detailed description including names and dates, if possible, of the actions of the Peace Corps or ACTION officials which resulted in the alleged illegal discrimination;

(3) The manner in which the Peace Corps or ACTION action directly affected the complainant; and

(4) The relief sought.

A complaint shall be deemed filed on the date it is received by the appropriate agency official. When a complaint does not conform with the above definition, it shall nevertheless be accepted. The complainant shall be notified of the steps necessary to correct the deficiencies of the complaint. The complainant shall have 30 days from his or her receipt of notification of the complaint defects to resubmit an amended complaint.

(h) *Counselor* means an official designated by the EO Director to perform the functions of conciliation as detailed in this part.

(i) *Agent* means a class member who acts for the class during the processing of a class complaint. In order to be accepted as the agent for a class complaint, in addition to those requirements of a complaint found in §1225.3(g) of this part, the complaint must meet the requirements for a class complaint as found in subpart C of these regulations.

§1225.4 Coverage.

(a) These procedures apply to all Peace Corps or ACTION applicants, trainees, and Volunteers throughout their term of service with the Peace Corps or ACTION. When an applicant, trainee, or Volunteer makes a complaint which contains an allegation of illegal discrimination in connection with an action that would otherwise be processed under a grievance, early termination, or other administrative system of the agency, the allegation of illegal discrimination shall be processed under this part. At the discretion of the appropriate Director, any other issues raised may be consolidated with the discrimination complaint for processing under these regulations. Any issues which are not so consolidated shall continue to be processed under those procedures in which they were originally raised.

(b) The submission of class complaints alleging illegal discrimination as defined above will be handled in accordance with the procedure outlined in subpart C.

§1225.5 Representation.

Any aggrieved party may be represented and assisted in all stages of these procedures by an attorney or representative of his or her own choosing. An aggrieved party must immediately inform the agency if counsel is retained. Attorney fees or other appropriate relief may be awarded in the following circumstances:

(a) Informal adjustment of a complaint. An informal adjustment of a complaint may include an award of attorney fees or other relief deemed appropriate by the EO Director. Where the parties agree on an adjustment of the complaint, but cannot agree on whether attorney fees or costs should be awarded, or on their amount, this issue may be appealed to the appropriate Director to be determined in the manner detailed in §1225.11 of this part.

(b) Final Agency Decision. When discrimination is found, the appropriate Director shall advise the complainant that any request for attorney fees or costs must be documented and submitted for review within 20 calendar days after his or her receipt of the final agency decision. The amount of such awards shall be determined under §1225.11. In the unusual situation in which it is determined not to award attorney fees or other costs to a prevailing complainant, the appropriate Director in his or her final decision shall set forth the specific reasons thereof.

§1225.6 Freedom from reprisal.

Aggrieved parties, their representatives, and witnesses will be free from restraint, interference, coercion, discrimination, or reprisal at any stage in the presentation and processing of a complaint, including the counseling stage described in §1225.8 of this part, or any time thereafter.

§1225.7 Review of allegations of reprisal.

An aggrieved party, his or her representative, or a witness who alleges restraint, interference, coercion, discrimination, or reprisal in connection with the presentation of a complaint under this part, may, if covered by this part, request in writing that the allegation be reviewed as an individual complaint of discrimination subject to

the procedures described in Subpart B or that the allegation be considered as an issue in the complaint at hand.

Subpart B—Processing Individual Complaints of Discrimination

§ 1225.8 Precomplaint procedure.

(a) An aggrieved person who believes that he or she has been subject to illegal dicrimination shall bring such allegations to the attention of the appropriate Counselor within 30 days of the alleged discrimination to attempt to resolve them. The process for notifying the appropriate Counselor is the following:

(1) Aggrieved applicants, trainees or Volunteers who have not departed for overseas assignments, or who have returned to Washington for any administrative reason shall direct their allegations to the EO Director for assignment to an appropriate Counselor.

(2) Aggrieved trainees or Volunteers overseas shall direct their allegations to the designated Counselor for that post.

(3) Aggrieved applicants, trainees, and Volunteers applying for, or enrolled in ACTION domestic programs shall direct their allegations to the designated Counselor for that Region.

(b) Upon receipt of the allegation, the Counselor or designee shall make whatever inquiry is deemed necessary into the facts alleged by the aggrieved party and shall counsel the aggrieved party for the purpose of attempting an informal resolution agreeable to all parties. The Counselor will keep a written record of his or her activities which will be submitted to the EO Director if a formal complaint concerning the matter is filed.

(c) If after such inquiry and counseling an informal resolution to the allegation is not reached, the Counselor shall notify the aggrieved party in writing of the right to file a complaint of discrimination with the EO Director within 15 calendar days of the aggrieved party's receipt of the notice.

(d) The Counselor shall not reveal the identity of the aggrieved party who has come to him or her for consultation, except when authorized to do so by the aggrieved party. However, the identity of the aggrieved party may be revealed once the agency has accepted a complaint of discrimination from the aggrieved party.

§ 1225.9 Complaint procedure.

(a) *EO Director.* (1) The EO Director must accept a complaint if the process set forth above has followed, and the complaint states a charge of illegal discrimination. The agency will extend the time limits set herein (a) when the complainant shows that he or she was not notified of the time limits and was not otherwise aware of them, or (b) the complainant shows that he or she was prevented by circumstances beyond his or her control from submitting the matter in a timely fashion, or (c) for other reasons considered sufficiently by the agency. At any time during the complaint procedure, the EO Director may cancel a complaint because of failure of the aggrieved party to prosecute the complaint. If the complaint is rejected for failure to meet one or more of the requirements set out in the procedure outlined in §1225.8 or is cancelled, the EO Director shall inform the aggrieved party in writing of this Final Agency Decision; that the Peace Corps or ACTION will take no further action; and of the right, to file a civil action as described in §1225.21 of this part.

(2) Upon acceptance of the complaint and receipt of the Counselor's report, the EO Director shall provide for the prompt investigation of the complaint. Whenever possible, the person assigned to investigate the complaint shall occupy a position in the agency which is not, directly or indirectly, under the jurisdiction of the head of that part of the agency in which the complaint arose. The investigation shall include a thorough review of the circumstances under which the alleged discrimination occurred, and any other circumstances which may constitute, or appear to constitute discrimination against the complainant. The investigator shall compile an investigative file, which includes a summary of the investigation, recommended findings of fact and a recommended resolution of the complaint. The investigator shall forward the investigative file to the EO Director and shall provide the complainant with a copy.

(3) The EO Director shall review the complaint file including any additional statements provided by the complainant, make findings of fact, and shall offer an adjustment of the complaint if the facts support the complaint. If the proposed adjustment is agreeable to all parties, the terms of the adjustment shall be reduced to writing, signed by both parties, and made part of the complaint file. A copy of the terms of the adjustment shall be provided the complainant. If the proposed adjustment of the complaint is not acceptable to the complainant, or the EO Director determines that such an offer is inappropriate, the EO Director shall forward the complaint file with a written notification of the findings of facts, and his or her recommendation of the proposed disposition of the complaint to the appropriate Director. The aggrieved party shall receive a copy of the notification and recommendation and shall be advised of the right to appeal the recommended disposition to the appropriate Director. Within ten (10) calendar days of receipt of such notice, the complainant may submit his or her appeal of the recommended disposition to the appropriate Director.

(b) *Appeal to Director.* If no timely notice of appeal is received from the aggrieved party, the appropriate Director or designee may adopt the proposed disposition as the Final Agency Decision. If the aggrieved party appeals, the appropriate Director or designee, after review of the total complaint file, shall issue a decision to the aggrieved party. The decision of the appropriate Director shall be in writing, state the reasons underlying the decision, shall be the Final Agency Decision, shall inform the aggrieved party of the right to file a civil action as described in § 1225.21 of this part, and, if appropriate, designate the procedure to be followed for the award of attorney fees or costs.

§ 1225.10 Corrective action.

When it has been determined by Final Agency Decision that the aggrieved party has been subjected to illegal discrimination, the following corrective actions may be taken:

(a) Selection as a Trainee for aggrieved parties found to have been denied selection based on prohibited discrimination.

(b) Reappointment to Volunteer service for aggrieved parties found to have been early-terminated as a result of prohibited discrimination. To the extent possible, a Volunteer will be placed in the same position previously held. However, reassignment to the specific country of prior service, or to the specific position previously held, is contingent on several programmatic considerations such as the continued availability of the position, or program in that country, and acceptance by the host country of such placement. If the same position is deemed to be no longer available, the aggrieved party will be offered a reassignment to a position in as similar circumstances to the position previously held, or to resign from service for reasons beyond his or her control. Such a reassignment may require both additional training and an additional two year commitment to volunteer service.

(c) Provision for reasonable attorney fees and other costs incurred by the aggrieved party.

(d) Such other relief as may be deemed appropriate by the Director of Peace Corps or ACTION.

§ 1225.11 Amount of attorney fees.

(a) When a decision of the agency provides for an award of attorney's fees or costs, the complainant's attorney shall submit a verified statement of costs and attorney's fees as appropriate, to the agency within 20 days of receipt of the decision. A statement of attorney's fees shall be accompanied by an affidavit executed by the attorney of record itemizing the attorney's charges for legal services. Both the verified statement and the accompanying affidavit shall be made a part of the complaint file. The amount of attorney's fees or costs to be awarded the complainant shall be determined by agreement between the complainant, the complainant's representative and the appropriate Director. Such agreement shall immediately be reduced to writing. If the complainant, the representative and the agency cannot reach an agreement on the amount of attorney's fees or costs within 20 calendar days of receipt of the verified

statement and accompanying affidavit, the appropriate Director shall issue a decision determining the amount of attorney fees or costs within 30 calendar days of receipt of the statement and affidavit. Such decision shall include the specific reasons for determining the amount of the award.

(b) The amount of attorney's fees shall be made in accordance with the following standards: The time and labor required, the novelty and difficulty of the questions, the skills requisite to perform the legal service properly, the preclusion of other employment by the attorney due to acceptance of the case, the customary fee, whether the fee is fixed or contingent, time limitation imposed by the client or the circumstances, the amount involved and the results obtained, the experience, reputation, and ability of the attorney, the undesirability of the case, the nature and length of the professional relationship with the client, and the awards in similar cases.

Subpart C—Processing Class Complaints of Discrimination

§ 1225.12 Precomplaint procedure.

An applicant, trainee or Volunteer who believes that he or she is among a group of present or former Peace Corps or ACTION Volunteers, trainees, or applicants for volunteer service who have been illegally discriminated against and who wants to be an agent for the class shall follow those precomplaint procedures outlined in §1225.8 of this part.

§ 1225.13 Acceptance, rejection or cancellation of complaint.

(a) Upon receipt of a class complaint, the Counselor's report, and any other information pertaining to timeliness or other relevant circumstances related to the complaint, the EO Director shall review the file to determine whether to accept or reject the complaint, or a portion thereof, for any of the following reasons:

(1) It was not timely filed;

(2) It consists of an allegation which is identical to an allegation contained in a previous complaint filed on behalf of the same class which is pending in the agency or which has been resolved or decided by the agency;

(3) It is not within the purview of this subpart;

(4) The agent failed to consult a Counselor in a timely manner;

(5) It lacks specificity and detail;

(6) It was not submitted in writing or was not signed by the agent;

(7) It does not meet the following prerequisites.

(i) The class is so numerous that a consolidated complaint of the members of the class is impractical;

(ii) There are questions of fact common to the class;

(iii) The claims of the agent of the class are representative of the claims of the class;

(iv) The agent of the class, or his or her representative will fairly and adequately protect the interest of the class.

(b) If an allegation is not included in the Counselor's report, the EO Director shall afford the agent 15 calendar days to explain whether the matter was discussed and if not, why he or she did not discuss the allegation with the Counselor. If the explanation is not satisfactory, the EO Director may decide to reject the allegation. If the explanation is satisfactory, the EO Director may require further counseling of the agent.

(c) If an allegation lacks specificity and detail, or if it was not submitted in writing or not signed by the agent, the EO Director shall afford the agent 30 days from his or her receipt of notification of the complaint defects to resubmit an amended complaint. The EO Director may decide that the agency reject the complaint if the agent fails to provide such information within the specified time period. If the information provided contains new allegations outside the scope of the complaint, the EO Director must advise the agent how to proceed on an individual or class basis concerning these allegations.

(d) The EO Director may extend the time limits for filing a complaint and for consulting with a Counselor when the agent, or his or her representative, shows that he or she was not notified of the prescribed time limits and was not otherwise aware of them or that he or

she was prevented by circumstances beyond his or her control from acting within the time limit.

(e) When appropriate, the EO Director may determine that a class be divided into subclasses and that each subclass be treated as a class, and the provisions of this section then shall be construed and applied accordingly.

(f) The EO Director may cancel a complaint after it has been accepted because of failure of the agent to prosecute the complaint. This action may be taken only after:

(1) The EO Director has provided the agent a written request, including notice of proposed cancellation, that he or she provide certain information or otherwise proceed with the complaint; and

(2) Within 30 days of his or her receipt of the request.

(g) An agent must be informed by the EO Director in a request under paragraph (b) or (c) of this section that his or her complaint may be rejected if the information is not provided.

§ 1225.14 Consolidation of complaints.

The EO Director may consolidate the complaint if it involves the same or sufficiently similar allegations as those contained in a previous complaint filed on behalf of the same class which is pending in the agency or which has been resolved or decided by the agency.

§ 1225.15 Notification and opting out.

(a) Upon acceptance of a class complaint, the agency, within 30 calendar days, shall use reasonable means, such as delivery, mailing, distribution, or posting, to notify all class members of the existence of the class complaint.

(b) A notice shall contain:

(1) The name of the agency or organizational segment thereof, its location and the date of acceptance of the complaint;

(2) A description of the issues accepted as part of the class complaint;

(3) An explanation that class members may remove themselves from the class by notifying the agency within 30 calendar days after issuance of the notice; and

(4) An explanation of the binding nature of the final decision or resolution of the complaint.

§ 1225.16 Investigation and adjustment of complaint.

The complaint shall be processed promptly after it has been accepted. Once a class complaint has been accepted, the procedure outlined in § 1225.9 of this part shall apply.

§ 1225.17 Agency decision.

(a) If an adjustment of the complaint cannot be made the procedures outlined in § 1225.9 shall be followed by the EO Director except that any notice required to be sent to the aggrieved party shall be sent to the agent of the class or his or her representative.

(b) The Final Agency Decision on a class complaint shall be binding on all members of the class.

§ 1225.18 Notification of class members of decision.

Class members shall be notified by the agency of the final agency decision and corrective action, if any, using at the minimum, the same media employed to give notice of the existence of the class complaint. The notice, where appropriate, shall include information concerning the rights of class members to seek individual relief and of the procedures to be followed. Notice shall be given by the agency within ten (10) calendar days of the transmittal of its decision to the agent.

§ 1225.19 Corrective action.

(a) When discrimination is found, Peace Corps or ACTION must take appropriate action to eliminate or modify the policy or practice out of which such discrimination arose, and provide individual corrective action to the agent and other class members in accordance with § 1225.10 of this part.

(b) When discrimination is found and a class member believes that but for that discrimination he or she would have been accepted as a Volunteer or received some other volunteer service benefit, the class member may file a written claim with the EO Director within thirty (30) calendar days of notification by the agency of its decision.

(c) The claim must include a specific, detailed statement showing that the claimant is a class member who was affected by an action or matter resulting from the discriminatory policy or practice which arose not more than 30 days preceding the filing of the class complaint.

(d) The agency shall attempt to resolve the claim within sixty (60) calendar days after the date the claim was postmarked, or, in the absence of a postmark, within sixty (60) calendar days after the date it was received by the EO Director.

§ 1225.20 Claim appeals.

(a) If the EO Director and claimant do not agree that the claimant is a member of the class, or upon the relief to which the claimant is entitled, the EO Director shall refer the claim, with recommendations concerning it to the appropriate Director for Final Agency Decision and shall so notify the claimant. The class member may submit written evidence to the appropriate Director concerning his or her status as a member of the class. Such evidence must be submitted no later than ten (10) calendar days after receipt of referral.

(b) The appropriate Director shall decide the issue within thirty (30) days of the date of referral by the EO Director. The claimant shall be informed in writing of the decision and its basis and that it will be the Final Agency Decision on the issue.

§ 1225.21 Statutory rights.

(a) A Volunteer, trainee, or applicant is authorized to file a civil action in an appropriate U.S. District Court:

(1) Within thirty (30) calendar days of his or her receipt of notice of final action taken by the agency.

(2) After one hundred eighty (180) calendar days from the date of filing a complaint with the agency if there has been no final agency action.

(b) For those complaints alleging discrimination that occur outside the United States, the U.S. District Court for the District of Columbia shall be deemed the appropriate forum.

PART 1226—PROHIBITIONS ON ELECTORAL AND LOBBYING ACTIVITIES

Subpart A—General Provisions

Sec.

Subpart B—Sponsoring Organization

Subpart C—Volunteer Activities

Subpart D—Sponsor Employee Activities

AUTHORITY: Secs. 403, 415(b), Pub. L. 93–113, 87 Stat. 408, 411–412.

SOURCE: 46 FR 8522, Jan. 27, 1981, unless otherwise noted.

Subpart A—General Provisions

§ 1226.1 Purpose.

This part implements provisions of the Domestic Volunteer Service Act, 1973, 87 Stat. 394, Pub. L. 93–113, as amended, hereinafter referred to as the Act, pertaining to the prohibited use of Federal funds or the involvement of agency programs and volunteers in electoral and lobbying activities. These regulations are designed to define and clarify the nature and scope of prohibited activities to ensure that programs under the Act and volunteer activities are conducted within the statutory bounds established by the Act. The penalties for violation of the regulations are also prescribed. The statutory source of the prohibitions upon electoral and lobbying activities is section 403 (a) and (b) of the Act. Rules applying to the Hatch Act (Title III of chapter 73, title 5, United States Code) to full time and certain part time volunteers, as required by section 415(b) of the Act, are also set forth herein.

§1226.2 Scope.

This part applies, except where otherwise noted, to all full time and part time volunteers serving in a program authorized by the Act, including VISTA, Service Learning and the Older American Volunteer Programs. It also applies to employees of sponsoring organizations, whose salaries, or other compensation, are paid, in whole or in part, with agency funds.

§1226.3 Definitions.

(a) The *Act* means the Domestic Volunteer Service Act of 1973, as amended, Pub. L. 93–113 (42 U.S.C. 4951 *et seq.*).

(b) *Assistance* means funds, volunteers or volunteer training, which is paid for from funds appropriated for the purpose of supporting activities under the Act, and includes locally provided funds required by law, regulation or policy as a local contribution to activities authorized by the Act.

(c) *Full time* when used in the context of volunteer service, means service of not less than 35 hours per week.

(d) *Part time* when used in the context of volunteer service, means service that is less than full time.

(e) *Recipient* or *sponsor organization* means any organization that receives assistance under the Act.

(f) *Volunteer* means an individual enrolled for service in a program or project that is authorized by or which receives assistance under the Act.

(g) *Legislative body* includes the United States Congress, State and Territorial Legislatures and locally elected or appointed bodies with the authority to enact laws.

(h) *Public office* includes any Federal, State, local elective, or party office.

(i) *Party office* means an elective position in a national, state or local organization or committees or convention of such organization, which has, as a principal purpose, support or opposition to candidates for public office.

(j) *Legislation* means bills, resolutions, amendments, nominations and other matters pending or proposed in a legislative body and includes any other matter which may be the subject of action by the legislative body.

Subpart B—Sponsoring Organization

§1226.4 General.

Under section 403 of the Act, volunteer programs may not be conducted in a manner which supports or results in the identification of such programs with prohibited activities. This section prescribes the nature and extent of involvement in such activity by an organization which would preclude the assignment of volunteers to the organization.

§1226.5 Electoral, voter registration, and other activities.

Volunteers or other assistance, in any program under the Act shall not be assigned or provided to an organization if a principal purpose or activity of the organization includes any of the following activities:

(a) *Electoral Activities.* Any activity designed to influence the outcome of elections to any public office, such as:

(1) Actively campaigning for or against or supporting candidates for public office;

(2) Raising, soliciting or collecting funds for candidates for public office;

(3) Preparing, distributing or providing funds for campaign literature for candidates, including leaflets pamphlets, and material designed for the print or electronic media;

(b) *Voter Registration Activities.* Any voter registration activity, such as

(1) Providing transportation of individuals to voter registration sites;

(2) Providing assistance to individuals in the process of registering to vote, including determinations of eligibility;

(3) Disseminating official voter registration material.

(c) *Transportation to the Polls.* Providing voters or prospective voters with transportation to the polls or raising, soliciting or collecting funds for such activity.

(d) Any program sponsor which, subsequent to the receipt of any federal assistance under the Act, makes as one of its principal purposes or activities any of the activities described in §1226.5 hereof shall be subject to the

suspension or termination of such assistance, as provided in 45 CFR part 1206.

Subpart C—Volunteer Activities

§ 1226.6 General.

(a) All volunteers, full and part time, are subject to the prohibitions on expenditure of federal funds for partisan and nonpartisan electoral activities, voter registration activities and transportation of voters to the polls, and efforts to influence the passage or defeat of legislation, as contained in section 403 of the Act.

(b) Full time volunteers, and certain part time volunteers as specified herein, are also subject to the restrictions in subchapter III, chapter 73 of title 5, United States Code, commonly referred to as the Hatch Act, as provided in section 415(b) of the Act.

§ 1226.7 Scope.

The provisions in this subpart are applicable to full time volunteers as defined in §1226.3(c), and to such part time volunteers as may be otherwise specified herein. Full time volunteers are deemed to be acting in their capacity as volunteers:

(a) When they are actually engaged in their volunteer assignments. VISTA volunteers and other full time volunteers who are required to serve without regard to regular working hours are presumed to be actually engaged in their volunteer assignments at all times, except during periods of authorized leave; or

(b) Whenever they represent themselves, or may reasonably be perceived by others, to be performing as a volunteer.

§ 1226.8 Prohibited activities.

(a) *Electoral Activity*. Volunteers shall not engage in any activity which may, directly or indirectly, affect or influence the outcome of any election to public office. Volunteers are prohibited from engaging in activities such as:

(1) Any activity in support of, or in opposition to a candidate for election to public office in a partisan or nonpartisan election;

(2) Participating in the circulation of petitions, or the gathering of signatures on nominating petitions or similar documents for candidates for public office.

(3) Raising, soliciting, or collecting funds for a candidate for public office;

(4) Preparing, distributing or providing funds for campaign material for candidates, including leaflets, pamphlets, brochures and material designed for the print or electronic media;

(5) Organizing political meetings or forums;

(6) Canvassing voters on behalf of a candidate for public office;

(7) Raising, soliciting or collecting funds for groups that engage in any of the activities described in paragraphs (a) (1) through (6) of this section.

(b) *Voter Registration*. Volunteers shall not engage in any voter registration activity, including:

(1) Providing transportation of individuals to voter registration sites;

(2) Providing assistance to individuals in the process of registering to vote, including determinations of eligibility;

(3) The dissemination of official voter registration materials; or

(4) Raising, soliciting or collecting funds to support activities described in paragraphs (b) (1) through (3) of this section.

(c) *Transportation to the Polls.* Volunteers shall not engage in any activity to provide voters or prospective voters with transportation to the polls, nor shall they collect, raise, or solicit funds to support such activity, including securing vehicles for such activity.

(d) *Efforts to Influence Legislation*. Except as provided in §1226.9, volunteers shall not engage in any activity for the purpose of influencing the passage or defeat of legislation or any measures on the ballot at a general or special election. For example, volunteers shall not:

(1) Testify or appear before legislative bodies in regard to proposed or pending legislation;

(2) Make telephone calls, write letters, or otherwise contact legislators or legislative staff, concerning proposed or pending legislation for the purpose of influencing the passage or defeat of such legislation;

(3) Draft legislation;

(4) Prepare legislative testimony;
(5) Prepare letters to be mailed by third parties to members of legislative bodies concerning proposed or pending legislation;
(6) Prepare or distribute any form of material, including pamphlets, newspaper columns, and material designed for either the print or electronic media, which urges recipients to contact their legislator or otherwise seek passage or defeat of legislation;
(7) Raise, collect or solicit funds to support efforts to affect the passage or defeat of legislation;
(8) Engage in any of the activities set forth in paragraphs (d) (1) through (7) of this section for the purpose of influencing executive action in approving or vetoing legislation.
(9) Circulate petitions, gather signatures on petitions, or urge or organize others to do so, which seek to have measures placed on the ballot at a general or special election.
(10) Engage in any of the activities enumerated in paragraphs (d) (1) through (9) of this section in regard to the passage or defeat of any measure on the ballot in a general or special election.

§ 1226.9 Exceptions.

(a) A volunteer may draft, review, testify or make representations to a legislative body regarding a legislative measure upon request of the legislative body, a committee, or a member thereof, provided that:
(1) The request to draft, review, testify or make representations is in writing, addressed to the volunteer or the organization to which the volunteer is assigned or placed, and signed by a member or members of the legislative body.
(2) The request states the type of representation or assistance requested and the issue to be addressed.
(3) The volunteer or the program sponsor provides a copy of such request to the State Director.
(b) The volunteer may draft, review, testify, or make a written representation to a legislative body regarding an authorization or appropriation measure directly affecting the operation of the project or program to which he or she is assigned: *Provided:*
(1) The sponsor organization provides notification to the State Director on a quarterly basis of all activity occurring pursuant to this exception.
(2) The legislative measure relates to the funding of the project or program or affects the existence or basic structure of the project or program.
(c) Notwithstanding the foregoing exceptions, any activity by a volunteer pursuant to paragraph (b) (1) or (2) of this section shall be incidental to his or her regular work assignment.

§ 1226.10 Hatch Act restrictions.

(a) In addition to the prohibitions described above, full time volunteers are subject to the Hatch Act, subchapter III, of chapter 73, title 5, United States Code. Full time volunteers shall not, directly or indirectly, actively participate in political management or in political campaigns. All volunteers retain the right to vote as they choose and to express their personal opinions on political issues or candidates. Examples of prohibited activities, include, but are not limited to,
(1) Candidacy for or service as a delegate or alternate to any political convention or service as an officer or employee thereof.
(2) Acting as an officer of a primary meeting or caucus, addressing, making motions, preparing or presenting resolutions, representing others, or otherwise taking part in such meetings or caucuses.
(3) Organizing or conducting a political meeting or rally on any political matter.
(4) Holding office as a precinct or ward leader or representative, or service on any committee of a political party. It is not necessary that the service of the volunteer itself be political in nature to fall within the prohibition.
(5) Organizing a political club, being an officer of such a club, being a member of any of its committees, or representing the members of a political club in meetings or conventions.
(6) Soliciting, collecting, receiving, disbursing or otherwise handling contributions made for political purposes.
(7) Selling or soliciting pledges for dinner tickets or other activities of political organizations or candidates, or for their benefit.

(8) Distributing campaign literature, badges, buttons, bumperstickers or posters.

(9) Publishing or being editorially connected with a newspaper or other publication generally known as partisan from a political standpoint.

(10) Writing for publication or publishing any letter or article, signed or unsigned, soliciting votes in favor of or in opposition to any political party, candidate or faction.

(11) Soliciting votes, helping get out the vote, acting as a checker, watcher or challenger for any party or faction, transporting voters to or from the polls, or transporting candidates on canvassing or speaking tours.

(12) Participation in or organizing a political parade.

(13) Initiating nominating petitions or acting as a canvasser or witness on such petitions.

(14) Being a candidate for nomination or election to a National, State, or local office.

(b) Hatch Act restrictions apply to full time volunteers at all times during their service, including off-duty hours, leave, holidays and vacations.

§ 1226.11 Part time volunteers.

(a) The provisions in this section are applicable to part time volunteers, as defined in § 1226.3(d). There are two categories of part time volunteers:

(1) Those enrolled for periods of service of at least twenty (20) hours per week for not less than twenty-six (26) consecutive weeks, as authorized under title I, part C of the Act, and

(2) All other part time volunteers, including Senior Companions, Foster Grandparents and Retired Senior Volunteers.

(b) All part time volunteers are subject to the restrictions described in § 1226.8 (a), (b), (c) and (d) and the exceptions in § 1226.9:

(1) When they are engaged in their volunteer assignments, in training activities, or other related activities supported by ACTION funds, or

(2) Whenever they represent themselves as ACTION volunteers, or may reasonably be perceived by others to be performing as volunteers.

(c) The restrictions described in § 1226.10, pertaining to the Hatch Act, are applicable to volunteers enrolled for periods of service of at least 20 hours per week for not less than 26 consecutive weeks, as authorized under title I, part C of the Act:

(1) At all times in any day on which they serve as volunteers, or when engaged in activities related to their volunteer assignments, such as training; or

(2) Whenever they represent themselves as volunteers or may reasonably be perceived by others to be performing as volunteers.

Subpart D—Sponsor Employee Activities

§ 1226.12 Sponsor employees.

Sponsor employees whose salaries or other compensation are paid, in whole or in part, with agency funds are subject to the restrictions described in § 1226.8 (a), (b), (c) and (d) and the exceptions in § 1226.9:

(a) Whenever they are engaged in an activity which is supported by ACTION funds; or

(b) Whenever they identify themselves as acting in their capacity as an official of a project which receives ACTION funds, or could reasonably be perceived by others as acting in such capacity.

§ 1226.13 Obligations of sponsors.

(a) It shall be the obligation of program sponsors to ensure that they:

(1) Fully understand the restrictions on volunteer activity set forth herein;

(2) Provide training to volunteers on the restrictions and ensure that all other training materials used in training volunteers are fully consistent with these restrictions;

(3) Monitor on a continuing basis the activity of volunteers for compliance with this provision;

(4) Report all violations, or questionable situations, immediately to the State Director.

(b) Failure of a sponsor to meet the requirements set forth in paragraph (a) of this section, or a violation of the rules contained herein by either the sponsor, the sponsor's employees subject to § 1226.12 or the volunteers assigned to the sponsor, at any time during the course of the grant may be

deemed to be a material failure to comply with the terms and conditions of the grant as that term is used in 45 CFR 1206.1 regarding suspension and termination of assistance or a violation of the Project Memorandum of Agreement, as applicable. The sponsor shall be subject to the procedures and penalties contained in 45 CFR 1206.1.

(c) Violation by a volunteer of any of the rules and regulations set forth herein may be cause for suspension or termination as set forth in 45 CFR 1213.5–5(2) or other disciplinary action.

PART 1229—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG–FREE WORKPLACE (GRANTS)

Subpart A—General

Subpart B—Effect of Action

Subpart C—Debarment

Subpart D—Suspension

Subpart E—Responsibilities of GSA, Agency and Participants

Subpart F—Drug-Free Workplace Requirements (Grants)

AUTHORITY: E.O. 12549: Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 *et seq*); Pub. L. 93–113; 42 U.S.C. 4951, *et seq*; 42 U.S.C. 5060.

SOURCE: 53 FR 19202 and 19204, May 26, 1988, unless otherwise noted.

CROSS REFERENCE: See also Office of Management and Budget notice published at 55 FR 21679, May 25, 1990.

Subpart A—General

§ 1229.100 Purpose.

(a) Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of Executive Order 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the Executive Order by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of ''ineligible'' in § 1229.105(i)), and participants who have voluntarily excluded themselves from participation in covered transactions

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

§ 1229.105 Definitions.

(a) *Adequate evidence.* Information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) *Affiliate.* Persons are affiliates of each another if, directly or indirectly, either one controls or has the power to control the other, *or*, a third person controls or has the power to control both. Indicia of control include, but are not limited to: Interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

(c) *Agency.* Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

(d) *Civil judgment.* The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801–12).

(e) *Conviction.* A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

(f) *Debarment.* An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is ''debarred.''

(g) *Debarring official.* An official authorized to impose debarment. The debarring official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(h) *Indictment.* Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(i) *Ineligible.* Excluded from participation in Federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for exemple, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

(j) *Legal proceedings.* Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State of local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

(k) *Nonprocurement list.* The portion of the *List of Parties Excluded from Federal Procurement or Nonprocurement Programs* complied, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(l) *Notice.* A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

(m) *Participant.* Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

(n) *Person.* Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: Foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

(o) *Preponderance of the evidence.* Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(p) *Principal.* Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

(1) Principal investigators.

(q) *Proposal.* A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

(r) *Respondent.* A person against whom a debarment or suspension action has been initiated.

(s) *State.* Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

(t) *Suspending official.* An official authorized to impose suspension. The suspending official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(u) *Suspension.* An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is ''suspended.''

(v) *Voluntary exclusion or voluntarily excluded.* A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

§ 1229.110 Coverage.

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as ''covered transactions.''

(1) *Covered transaction.* For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction.* Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: Grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) *Lower tier covered transaction.* A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently $25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(*1*) Principal investigators.

(*2*) Providers of federally-required audit services.

(2) *Exceptions.* The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of these regulations would be prohibited by law.

(b) *Relationship to other sections.* This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, ''Effect of Action,'' §1229.200, ''Debarment or suspension,'' sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in §1229.110(a). Sections 1229.325, ''Scope of debarment,'' and 1229.420, ''Scope of suspension,'' govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal procurement activities.* Debarment and suspension of Federal procurement contractors and subcontractors under Federal procurement contracts are covered by the Federal Acquisition Regulation (FAR), 48 CFR subpart 9.4.

§1229.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment

and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

Subpart B—Effect of Action

§1229.200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the executive branch of the Federal Government for the period of their debarment or suspension. Accordingly, no agency shall enter into primary covered transactions with such debarred or suspended persons during such period, except as permitted pursuant to §1229.215.

(b) *Loser tier covered transactions.* Except to the extent prohibited by law, persons who have been debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see §1229.110(a)(1)(ii)) for the period of their debarment or suspension.

(c) *Exceptions.* Debarment or suspension does not affect a person's eligibility for:

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

§1229.205 Ineligible persons.

Persons who are ineligible, as defined in §1229.105(i), are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

§1229.210 Voluntary exclusion.

Persons who accept voluntary exclusions under §1229.315 are excluded in accordance with the terms of their settlements. ACTION shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

§1229.215 Exception provision.

ACTION may grant an exception permitting a debarred, suspended, or voluntarily excluded person to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and §1229.200 of this rule. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with §1229.505(a).

§ 1229.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in § 1229.215.

§ 1229.225 Failure to adhere to restrictions.

Except as permitted under § 1229.215 or § 1229.220 of these regulations, a participant shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate. A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction (see Appendix B), unless it knows that the certification is erroneous. An agency has the burden of proof that such participant did knowingly do business with such a person.

Subpart C—Debarment

§ 1229.300 General.

The debarring official may debar a person for any of the causes in § 1229.305, using procedures established in §§ 1229.310 through 1229.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

§ 1229.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ 1229.300 through 1229.314 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, the effective date of these regulations, or a procurement debarment by any Federal agency taken pursuant to 48 CFR subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection

with a covered transaction, except as permitted in §1229.215 or §1229.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under §1229.315 or of any settlement of a debarment or suspension action; or

(5) Violation of any requirement of subpart F of this part, relating to providing a drug–free workplace, as set forth in §1229.615 of this part.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

[53 FR 19202 and 19204, May 26, 1988, as amended at 54 FR 4950 and 4965, Jan. 31, 1989; 55 FR 21704, May 25, 1990]

§1229.310 Procedures.

ACTION shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§1229.311 through 1229.314.

§1229.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

§1229.312 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

(a) That debarment is being considered;

(b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(c) Of the cause(s) relied upon under §1229.305 for proposing debarment;

(d) Of the provisions of §1229.311 through §1229.314, and any other ACTION procedures, if applicable, governing debarment decisionmaking; and

(e) Of the potential effect of a debarment.

§1229.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§1229.314 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with

any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c) (1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in § 1229.215.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§ 1229.315 Settlement and voluntary exclusion.

(a) When in the best interest of the Government, ACTION may, at any time, settle a debarment or suspension action.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see subpart E).

§ 1229.320 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(1) Debarment for causes other than those related to a violation of the requirements of subpart F of this part generally should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed.

(2) In the case of a debarment for a violation of the requirements of subpart F of this part (*see* 1229.305(c)(5)), the period of debarment shall not exceed five years.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of §§ 1229.311 through 1229.314 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

[53 FR 19202 and 19204, May 26, 1988, as amended at 54 FR 4950 and 4965, Jan. 31, 1989; 55 FR 21704, May 25, 1990]

§ 1229.325 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see §§ 1229.311 through 1229.314).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

Subpart D—Suspension

§ 1229.400 General.

(a) The suspending official may suspend a person for any of the causes in § 1229.405 using procedures established in §§ 1229.410 through 1229.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in § 1229.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

§ 1229.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§ 1229.400 through 1229.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in § 1229.305(a); or

(2) That a cause for debarment under § 1229.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ 1229.410 Procedures.

(a) *Investigation and referral.* Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

(b) *Decisionmaking process.* ACTION shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in § 1229.411 through § 1229.413.

§ 1229.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under § 1229.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of § 1229.411 through § 1229.413 and any other ACTION procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

§ 1229.412 Opportunity to contest suspension.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment, or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 1229.413 Suspending official's decision.

The suspending official may modify or terminate the suspension (for example, see § 1229.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(a) *No additional proceedings necessary.* In actions: Based on an indictment, conviction, or civil judgment; in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in

part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent.

§1229.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§1229.420 Scope of suspension.

The scope of a suspension is the same as the scope of a debarment (see §1229.325), except that the procedures of §§1229.410 through 1229.413 shall be used in imposing a suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

§1229.500 GSA responsibilities.

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

§1229.505 ACTION responsibilities.

(a) The agency shall provide GSA with current information concerning debarments, suspension, determinations of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, the agency shall also provide GSA and OMB with information concerning all transactions in which ACTION has granted exceptions under §1229.215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in §1229.500(b) and of the exceptions granted under §1229.215 within five working days after taking such actions.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) Agency officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (Tel. #).

(e) Agency officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

§ 1229.510 Participants' responsibilities.

(a) *Certification by participants in primary covered transactions.* Each participant shall submit the certification in Appendix A to this part for it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, each participant may, but is not required to, check the Nonprocurement List for its principals (Tel. #). Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) *Certification by participants in lower tier covered transactions.* (1) Each participant shall require participants in lower tier covered transactions to include the certification in Appendix B to this part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they determine the eligiblity of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants (Tel. #).

(c) *Changed circumstances regarding certification.* A participant shall provide immediate written notice to ACTION if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposals.

Subpart F—Drug-Free Workplace Requirements (Grants)

SOURCE: 55 FR 21688, 21704, May 25, 1990, unless otherwise noted.

§ 1229.600 Purpose.

(a) The purpose of this subpart is to carry out the Drug-Free Workplace Act of 1988 by requiring that—

(1) A grantee, other than an individual, shall certify to the agency that it will provide a drug-free workplace;

(2) A grantee who is an individual shall certify to the agency that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

(b) Requirements implementing the Drug-Free Workplace Act of 1988 for contractors with the agency are found at 48 CFR subparts 9.4, 23.5, and 52.2.

§ 1229.605 Definitions.

(a) Except as amended in this section, the definitions of § 1229.105 apply to this subpart.

(b) For purposes of this subpart—

(1) *Controlled substance* means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15;

(2) *Conviction* means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

(3) *Criminal drug statute* means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

(4) *Drug-free workplace* means a site for the performance of work done in connection with a specific grant at which employees of the grantee are

prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance;

(5) *Employee* means the employee of a grantee directly engaged in the performance of work under the grant, including:

(i) All *direct charge* employees;

(ii) All *indirect charge* employees, unless their impact or involvement is insignificant to the performance of the grant; and,

(iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll.

This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces);

(6) *Federal agency* or *agency* means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency;

(7) *Grant* means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by a Federal agency directly to a grantee. The term grant includes block grant and entitlement grant programs, whether or not exempted from coverage under the grants management government-wide common rule on uniform administrative requirements for grants and cooperative agreements. The term does not include technical assistance that provides services instead of money, or other assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations; or any veterans' benefits to individuals, i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States;

(8) *Grantee* means a person who applies for or receives a grant directly from a Federal agency (except another Federal agency);

(9) *Individual* means a natural person;

(10) *State* means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers the instrumentality to be an agency of the State government.

§ 1229.610 Coverage.

(a) This subpart applies to any grantee of the agency.

(b) This subpart applies to any grant, except where application of this subpart would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government. A determination of such inconsistency may be made only by the agency head or his/her designee.

(c) The provisions of subparts A, B, C, D and E of this part apply to matters covered by this subpart, except where specifically modified by this subpart. In the event of any conflict between provisions of this subpart and other provisions of this part, the provisions of this subpart are deemed to control with respect to the implementation of drug-free workplace requirements concerning grants.

§ 1229.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.

A grantee shall be deemed in violation of the requirements of this subpart if the agency head or his or her official designee determines, in writing, that—

(a) The grantee has made a false certification under § 1229.630;

(b) With respect to a grantee other than an individual—

(1) The grantee has violated the certification by failing to carry out the requirements of paragraphs (A)(a)–(g)

and/or (B) of the certification (Alternate I to Appendix C) or

(2) Such a number of employees of the grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace.

(c) With respect to a grantee who is an individual—

(1) The grantee has violated the certification by failing to carry out its requirements (Alternate II to Appendix C); or

(2) The grantee is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity.

§ 1229.620 Effect of violation.

(a) In the event of a violation of this subpart as provided in § 1229.615, and in accordance with applicable law, the grantee shall be subject to one or more of the following actions:

(1) Suspension of payments under the grant;

(2) Suspension or termination of the grant; and

(3) Suspension or debarment of the grantee under the provisions of this part.

(b) Upon issuance of any final decision under this part requiring debarment of a grantee, the debarred grantee shall be ineligible for award of any grant from any Federal agency for a period specified in the decision, not to exceed five years (*see* § 1229.320(a)(2) of this part).

§ 1229.625 Exception provision.

The agency head may waive with respect to a particular grant, in writing, a suspension of payments under a grant, suspension or termination of a grant, or suspension or debarment of a grantee if the agency head determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

§ 1229.630 Certification requirements and procedures.

(a)(1) As a prior condition of being awarded a grant, each grantee shall make the appropriate certification to the Federal agency providing the grant, as provided in Appendix C to this part.

(2) Grantees are not required to make a certification in order to continue receiving funds under a grant awarded before March 18, 1989, or under a no-cost time extension of such a grant. However, the grantee shall make a one-time drug-free workplace certification for a non-automatic continuation of such a grant made on or after March 18, 1989.

(b) Except as provided in this section, all grantees shall make the required certification for each grant. For mandatory formula grants and entitlements that have no application process, grantees shall submit a one-time certification in order to continue receiving awards.

(c) A grantee that is a State may elect to make one certification in each Federal fiscal year. States that previously submitted an annual certification are not required to make a certification for Fiscal Year 1990 until June 30, 1990. Except as provided in paragraph (d) of this section, this certification shall cover all grants to all State agencies from any Federal agency. The State shall retain the original of this statewide certification in its Governor's office and, prior to grant award, shall ensure that a copy is submitted individually with respect to each grant, unless the Federal agency has designated a central location for submission.

(d)(1) The Governor of a State may exclude certain State agencies from the statewide certification and authorize these agencies to submit their own certifications to Federal agencies. The statewide certification shall name any State agencies so excluded.

(2) A State agency to which the statewide certification does not apply, or a State agency in a State that does not have a statewide certification, may elect to make one certification in each Federal fiscal year. State agencies that previously submitted a State agency certification are not required to make a certification for Fiscal Year 1990 until June 30, 1990. The State agency shall retain the original of this State agency-wide certification in its central office and, prior to grant award, shall

ensure that a copy is submitted individually with respect to each grant, unless the Federal agency designates a central location for submission.

(3) When the work of a grant is done by more than one State agency, the certification of the State agency directly receiving the grant shall be deemed to certify compliance for all workplaces, including those located in other State agencies.

(e)(1) For a grant of less than 30 days performance duration, grantees shall have this policy statement and program in place as soon as possible, but in any case by a date prior to the date on which performance is expected to be completed.

(2) For a grant of 30 days or more performance duration, grantees shall have this policy statement and program in place within 30 days after award.

(3) Where extraordinary circumstances warrant for a specific grant, the grant officer may determine a different date on which the policy statement and program shall be in place.

§ 1229.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

(a) When a grantee other than an individual is notified that an employee has been convicted for a violation of a criminal drug statute occurring in the workplace, it shall take the following actions:

(1) Within 10 calendar days of receiving notice of the conviction, the grantee shall provide written notice, including the convicted employee's position title, to every grant officer, or other designee on whose grant activity the convicted employee was working, unless a Federal agency has designated a central point for the receipt of such notifications. Notification shall include the identification number(s) for each of the Federal agency's affected grants.

(2) Within 30 calendar days of receiving notice of the conviction, the grantee shall do the following with respect to the employee who was convicted.

(i) Take appropriate personnel action against the employee, up to and including termination, consistent with requirements of the Rehabilitation Act of 1973, as amended; or

(ii) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(b) A grantee who is an individual who is convicted for a violation of a criminal drug statute occurring during the conduct of any grant activity shall report the conviction, in writing, within 10 calendar days, to his or her Federal agency grant officer, or other designee, unless the Federal agency has designated a central point for the receipt of such notices. Notification shall include the identification number(s) for each of the Federal agency's affected grants.

(Approved by the Office of Management and Budget under control number 0991–0002)

APPENDIX A TO PART 1229—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted

or has become erroneous by reason of changed circumstances.

5. The terms ''covered transaction,'' ''debarred,'' ''suspended,'' ''ineligible,'' ''lower tier covered transaction,'' ''participant,'' ''person,'' ''primary covered transaction,'' ''principal,'' ''proposal,'' and ''voluntarily excluded,'' as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implemeting Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/ proposal has one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

APPENDIX B TO PART 1229—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to

the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms ''covered transaction,'' ''debarred,'' ''suspended,'' ''ineligible,'' ''lower tier covered transaction,'' ''participant,'' ''person,'' ''primary covered transaction,'' ''principal,'' ''proposal,'' and ''voluntarily excluded,'' as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department of agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department of agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

APPENDIX C TO PART 1229—CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All *direct charge* employees; (ii) All *indirect charge* employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[55 FR 21690, 21704, May 25, 1990]

PART 1230—NEW RESTRICTIONS ON LOBBYING

Subpart A—General

Subpart B—Activities by Own Employees

Subpart C—Activities by Other Than Own Employees

Subpart D—Penalties and Enforcement

Subpart E—Exemptions

Subpart F—Agency Reports

AUTHORITY: Section 319, Pub. L. 101–121 (31 U.S.C. 1352); Pub. L. 93–113; 42 U.S.C. 4951, et seq; 42 U.S.C. 5060.

SOURCE: 55 FR 6737, 6755, Feb. 26, 1990, unless otherwise noted.

CROSS REFERENCE: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

Subpart A—General

§1230.100 Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative ageement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, set forth in Appendix A, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form, set forth in Appendix B, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, set forth in Appendix A, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form, set forth in Appendix B, if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

§ 1230.105 Definitions.

For purposes of this part:

(a) *Agency*, as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

(b) *Covered Federal action* means any of the following Federal actions:

(1) The awarding of any Federal contract;

(2) The making of any Federal grant;

(3) The making of any Federal loan;

(4) The entering into of any cooperative agreement; and,

(5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan. Loan guarantees and loan insurance are addressed independently within this part.

(c) *Federal contract* means an acquisition contract awarded by an agency, including those subject to the Federal Acquisition Regulation (FAR), and any other acquisition contract for real or personal property or services not subject to the FAR.

(d) *Federal cooperative agreement* means a cooperative agreement entered into by an agency.

(e) *Federal grant* means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government or a direct appropriation made by law to any person. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, loan insurance, interest subsidies, insurance, or direct United States cash assistance to an individual.

(f) *Federal loan* means a loan made by an agency. The term does not include loan guarantee or loan insurance.

(g) *Indian tribe* and *tribal organization* have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

(h) *Influencing or attempting to influence* means making, with the intent to influence, any communication to or appearance before an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

(i) *Loan guarantee* and *loan insurance* means an agency's guarantee or insurance of a loan made by a person.

(j) *Local government* means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

(k) *Officer or employee of an agency* includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment;

(2) A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;

(3) A special Government employee as defined in section 202, title 18, U.S. Code; and,

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code appendix 2.

(l) *Person* means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated

for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(m) *Reasonable compensation* means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

(n) *Reasonable payment* means, with respect to perfessional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

(o) *Recipient* includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(p) *Regularly employed* means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or a commitment providing for the United States to insure or guarantee a loan, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, cooperative agreement, loan insurance commitment, or loan guarantee commitment. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

(q) *State* means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

§ 1230.110 Certification and disclosure.

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

(1) A Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000,

unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraph (a) or (b) of this section:

(1) A subcontract exceeding $100,000 at any tier under a Federal contract;

(2) A subgrant, contract, or subcontract exceeding $100,000 at any tier under a Federal grant;

(3) A contract or subcontract exceeding $100,000 at any tier under a Federal loan exceeding $150,000; or,

(4) A contract or subcontract exceeding $100,000 at any tier under a Federal cooperative agreement,

shall file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraph (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

Subpart B—Activities by Own Employees

§ 1230.200 Agency and legislative liaison.

(a) The prohibition on the use of appropriated funds, in § 1230.100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(b) For purposes of paragraph (a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

(c) For purposes of paragraph (a) of this section, the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) For purposes of paragraph (a) of this section, the following agencies and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95–507 and other subsequent amendments.

(e) Only those activities expressly authorized by this section are allowable under this section.

§1230.205 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in §1230.100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or an extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) For purposes of paragraph (a) of this section, ''professional and technical services'' shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by this section are allowable under this section.

§1230.210 Reporting.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

Subpart C—Activities by Other Than Own Employees

§1230.300 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in §1230.100 (a), does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) The reporting requirements in §1230.110 (a) and (b) regarding filing a disclosure form by each person, if required, shall not apply with respect to professional or technical services rendered directly in the preparation, submission, or negotiation of any commitment providing for the United States to insure or guarantee a loan.

(c) For purposes of paragraph (a) of this section, ''professional and technical services'' shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting or a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(d) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(e) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(f) Only those services expressly authorized by this section are allowable under this section.

Subpart D—Penalties and Enforcement

§ 1230.400 Penalties.

(a) Any person who makes an expenditure prohibited herein shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see Appendix B) to be filed or amended if required herein, shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

(c) A filing or amended filing on or after the date on which an administrative action for the imposition of a civil penalty is commenced does not prevent the imposition of such civil penalty for a failure occurring before that date. An administrative action is commenced with respect to a failure when an investigating official determines in writing to commence an investigation of an allegation of such failure.

(d) In determining whether to impose a civil penalty, and the amount of any such penalty, by reason of a violation by any person, the agency shall consider the nature, circumstances, extent, and gravity of the violation, the effect on the ability of such person to continue in business, any prior violations by such person, the degree of culpability of such person, the ability of the person to pay the penalty, and such other matters as may be appropriate.

(e) First offenders under paragraph (a) or (b) of this section shall be subject to a civil penalty of $10,000, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between $10,000 and $100,000, as determined by the agency head or his or her designee.

(f) An imposition of a civil penalty under this section does not prevent the United States from seeking any other remedy that may apply to the same conduct that is the basis for the imposition of such civil penalty.

§1230.405 Penalty procedures.

Agencies shall impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C. sections 3803 (except subsection (c)), 3804, 3805, 3806, 3807, 3808, and 3812, insofar as these provisions are not inconsistent with the requirements herein.

§1230.410 Enforcement.

The head of each agency shall take such actions as are necessary to ensure that the provisions herein are vigorously implemented and enforced in that agency.

Subpart E—Exemptions

§1230.500 Secretary of Defense.

(a) The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibition whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of each such written exemption to Congress immediately after making such a determination.

(b) The Department of Defense may issue supplemental regulations to implement paragraph (a) of this section.

Subpart F—Agency Reports

§1230.600 Semi-annual compilation.

(a) The head of each agency shall collect and compile the disclosure reports (see Appendix B) and, on May 31 and November 30 of each year, submit to the Secretary of the Senate and the Clerk of the House of Representatives a report containing a compilation of the information contained in the disclosure reports received during the six-month period ending on March 31 or September 30, respectively, of that year.

(b) The report, including the compilation, shall be available for public inspection 30 days after receipt of the report by the Secretary and the Clerk.

(c) Information that involves intelligence matters shall be reported only to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(d) Information that is classified under Executive Order 12356 or any successor order shall be reported only to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives or the Committees on Armed Services of the Senate and the House of Representatives (whichever such committees have jurisdiction of matters involving such information) and to the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(e) The first semi-annual compilation shall be submitted on May 31, 1990, and shall contain a compilation of the disclosure reports received from December 23, 1989 to March 31, 1990.

(f) Major agencies, designated by the Office of Management and Budget (OMB), are required to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives no later than with the compilations due on May 31, 1991. OMB shall provide detailed specifications in a memorandum to these agencies.

(g) Non-major agencies are requested to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives.

(h) Agencies shall keep the originals of all disclosure reports in the official files of the agency.

§1230.605 Inspector General report.

(a) The Inspector General, or other official as specified in paragraph (b) of this section, of each agency shall prepare and submit to Congress each year, commencing with submission of the President's Budget in 1991, an evaluation of the compliance of that agency with, and the effectiveness of, the requirements herein. The evaluation may include any recommended changes that

may be necessary to strengthen or improve the requirements.

(b) In the case of an agency that does not have an Inspector General, the agency official comparable to an Inspector General shall prepare and submit the annual report, or, if there is no such comparable official, the head of the agency shall prepare and submit the annual report.

(c) The annual report shall be submitted at the same time the agency submits its annual budget justifications to Congress.

(d) The annual report shall include the following: All alleged violations relating to the agency's covered Federal actions during the year covered by the report, the actions taken by the head of the agency in the year covered by the report with respect to those alleged violations and alleged violations in previous years, and the amounts of civil penalties imposed by the agency in the year covered by the report.

APPENDIX A TO PART 1230—CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form–LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

APPENDIX B TO PART 1230—DISCLOSURE FORM TO REPORT LOBBYING

CONTEXT PRECEDING THE KEY WORD	KEY WORD AND CONTEXT FOLLOWING THE KEY WORD	FAR REFERENCE
	Ordering from Federal Supply Schedules.	8.4
	Ordering.	52.216-18
Suspension of Work, Stop-Work	Orders, and Government Delay of Work.	12.5
Change	Orders.	43.2
Purchase	Orders.	13.5
Stop-Work	Order—Facilities.	52.212-14
Basic	ordering agreements.	16.703
Stop-work	orders.	12.503
	Organization and Direction of the Work.	52.236-19
	Organization costs.	31.205-27
Type of Business	Organization.	52.215-6
	Organizational Conflicts of Interest.	9.5
Notice of Participation by	Organizations for the Handicapped.	52.219-15
Contracts with Government Employees or	Organizations Owned or Controlled by Them.	3.6
Contracts with Commercial	Organizations.	31.2
Contracts with commercial	organizations.	31.103
Contracts with Nonprofit	Organizations.	31.7
Contracts with nonprofit	organizations.	31.108
Type of Business	Organization—Sealed Bidding.	52.214-2
Postaward	Orientation.	42.5
F.o.b.	Origin and/or F.o.b. Destination Evaluation.	52.247-45
Shipping Point(s) Used in Evaluation of F.o.b.	Origin Offers.	52.247-46
F.o.b.	Origin, Contractor's Facility.	52.247-30
F.o.b.	Origin, Freight Allowed.	52.247-31
F.o.b.	Origin, Freight Prepaid.	52.247-32
F.o.b.	Origin, with Differentials.	52.247-33
Evaluation—F.o.b.	Origin.	52.247-47
F.o.b.	origin.	47.303-1
F.o.b.	Origin.	52.247-29
F.o.b.	Origin—Carload and Truckload Shipments.	52.247-59
F.o.b.	Origin—Government Bills of Lading or Indicia Mail.	52.242-11
F.o.b.	Origin—Government Bills of Lading or Prepaid Postage.	52.242-10
F.o.b.	Origin—Minimum Size of Shipments.	52.247-61
	Other business expenses.	31.205-28
Gains and losses on disposition of depreciable property or	other capital assets.	31.205-16
Losses on	other contracts.	31.205-23
	Other Contracts.	52.236-8
Royalties and	other costs for use of patents.	31.205-37
Interest and	other financial costs.	31.205-20
	Other Improper Business Practices.	3.5
SPECIFICATIONS, STANDARDS, AND	OTHER PURCHASE DESCRIPTIONS.	PART 10
Certification Regarding Debarment, Suspension, Proposed Debarment, and	Other Responsibility Matters.	52.209-5
Acquisition from the Blind and	Other Severely Handicapped.	8.7

CONTEXT PRECEDING THE KEY WORD	KEY WORD, AND CONTEXT FOLLOWING THE KEY WORD	FAR REFERENCE
SMALL PURCHASE AND	OTHER SIMPLIFIED PURCHASE PROCEDURES.	PART 13
	OTHER SOCIOECONOMIC PROGRAMS.	PART 26
	Other Than Full and Open Competition.	6.3
Contractor Liability for Loss of and/or Damage to Freight	other than Household Goods.	52.247-22
Subcontractors and	Outside Associates and Consultants.	52.244-4
Severance Payments to		
Foreign Nationals Employed Under a Service Contract Performed	Outside the United States.	52.237-8
Workers' Compensation and War-Hazard Insurance	Overseas.	52.228-4
Late Submissions, Modifications, and Withdrawals of Bids (	Overseas).	52.214-32
Late Submissions, Modifications, and Withdrawals of Proposals (	Overseas).	52.215-36
Late Submissions, Modifications, and		
and Withdrawals of Technical Proposals under Two-Step Sealed Bidding (	Overseas).	52.214-33
	Oversight in Architect-Engineer Contracts.	52.236-24
Work	Oversight in Cost-Reimbursement Construction Contracts.	52.236-18
Contract Work Hours and Safety Standards Act—	Overtime Compensation.	52.222-4
Payment for	Overtime Premiums.	52.222-2
Women-	Owned Small Business Representation.	52.219-3
Utilization of Women-	Owned Small Businesses.	52.219-13
Preference for Privately	Owned U.S.-Flag Commercial Vessels.	52.247-64
	Packing, marking, and consignment instructions.	47.305-10
	Paid Advertisements.	5.5
OMB Approval Under the	Paperwork Reduction Act.	1.104-5
	Parent Company and Identifying Data	52.214-8
	Partial set-asides.	19.502-3
Notice of	Partial Small Business Set-Aside.	52.219-7
Stopping in Transit for	Partial Unloading.	52.247-19
Notice of	Participation by Organizations for the Handicapped.	52.219-15
Agency and Public	Participation.	1.5
Certification of Commercial Pricing for	Parts or Components.	52.232-32
Notice and Assistance Regarding	Patent and Copyright Infringement.	52.227-2
Filing of	Patent Applications—Classified Subject Matter.	52.227-10
	Patent costs.	31.205-30
	Patent Indemnity.	52.227-3
	Patent Indemnity—Construction Contracts.	52.227-4
	Patent Rights Under Government Contracts.	27.3
	Patent Rights—Retention by the Contractor (Long Form).	52.227-12
	Patent Rights—Retention by the Contractor (Short Form).	52.227-11
	PATENTS, DATA, AND COPYRIGHTS.	PART 27
Royalties and other costs for use of	patents.	31.205-37
	Patents.	27.2
	Patents—Notice of Government Licensee.	52.227-7
Incremental	Payment by Contractor to Government.	52.237-6
	Payment by Government to Contractor.	52.237-4

CONTEXT PRECEDING THE KEY WORD	KEY WORD, AND CONTEXT FOLLOWING THE KEY WORD	FAR REFERENCE
Prompt	Payment for Construction Contracts.	52.232-27
Prompt	Payment for Fixed-Price Architect-Engineer Contracts.	52.232-26
	Payment for Overtime Premiums.	52.222-2
	Payment in Local Foreign Currency.	25.5
Electronic Funds Transfer	Payment Methods.	52.232-28
Limitation on the	Payment of Funds to Influence Federal Transactions.	3.8
Fast	Payment Procedure.	13.3
Fast	Payment Procedure.	2.213-1
	Payment under Communication Service Contracts with Common Carriers.	52.232-6
Allowable Cost and	Payment.	52.216-7
Discounts for Prompt	Payment.	52.232-8
Prompt	Payment.	52.232-25
Prompt	Payment.	32.9
Progress	Payments Based on Costs.	32.5
Notice of Availability of Progress	Payments Exclusively for Small Business Concerns.	52.232-14
	Payments of Allowable Costs Before Definitization.	52.216-26
Balance of	Payments Program Certificate.	52.225-6
Buy American Act—Trade Agreements Act—Balance of	Payments Program Certificate.	52.225-8
Balance of	Payments Program.	52.225-7
Balance of	Payments Program.	25.3
Buy American Act—Trade Agreements Act—Balance of	Payments Program.	52.225-9
Severance	Payments to Foreign Nationals Employed Under a Service Contract Performed Outside the United States.	52.237-8
Certification and Disclosure Regarding	Payments to Influence Certain Federal Transactions.	52.203-11
Limitation on	Payments to Influence Certain Federal Transactions.	52.203-12
	Payments under Fixed-Price Architect-Engineer Contracts.	52.232-10
	Payments under Fixed-Price Construction Contracts.	52.232-5
	Payments under Fixed-Price Research and Development Contracts.	52.232-2
	Payments under Personal Services Contracts.	52.232-3
	Payments under Time-and-Materials and Labor-Hour Contracts.	52.232-7
	Payments under Transportation Contracts and Transportation-Related Services Contracts.	52.232-4
Advance	Payments.	52.232-12
Advance	Payments.	32.4
Limitation on Withholding of	Payments.	52.232-9
Notice of Progress	Payments.	52.232-13
Progress	Payments.	52.232-16
Vehicle Lease	Payments.	52.208-4
	Payments.	52.232-1
Allowable Cost and	Payment—Facilities Use.	52.216-14
Allowable Cost and	Payment—Facilities.	52.216-13
Technical Data Certification, Revision, and Withholding of	Payment—Major Systems.	52.227-21
	Payrolls and Basic Records.	52.222-8
Fines,	penalties, and mischarging costs.	31.205-15
Termination of Defined Benefit	Pension Plans.	52.215-27

PART 1232—NON-DISCRIMINATION ON BASIS OF HANDICAP IN PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM ACTION

Subpart A—General Provisions

Subpart B—Employment and Volunteer Service Practices

Subpart C—Program Accessibility

Subpart D—Procedures

AUTHORITY: 29 U.S.C. 794.

SOURCE: 44 FR 31018, May 30, 1979, unless otherwise noted.

Subpart A—General Provisions

§ 1232.1 Purpose.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

§ 1232.2 Application.

This part applies to each recipient of Federal financial assistance from ACTION and to each program or activity that receives or benefits from such assistance, including volunteer programs such as VISTA, University Year for ACTION (UYA), Senior Companion Program (SCP), Foster Grandparent Program (FGP) and Retired Senior Volunteer Program (RSVP). This part does not apply to recipients outside the United States which receive financial assistance under the Peace Corps Act, 22 U.S.C. 2501, Pub. L. 87–293, as amended.

§ 1232.3 Definitions.

As used in this part the term:

(a) *The Act* means the Rehabilitation Act of 1973. Pub. L. 93–112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93–516, and the Rehabilitation Act Amendments of 1978, Pub. L. 95–602.

(b) *Section 504* means section 504 of the Act.

(c) *Director* means the Director of ACTION.

(d) *Recipient* means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(e) *Applicant for assistance* means one who submits an application, request, or plan required to be approved by an ACTION official or by a recipient as a condition to becoming a recipient.

(f) *Federal financial assistance* means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement which provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel;

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(4) A Federal agreement, arrangement or other contract which has as one of its purposes the provision of assistance, including the provision of volunteers under the Domestic Volunteer Service Act of 1973, 42 U.S.C. 4951, Pub. L. 93–113, as amended.

(g) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(h) Handicapped person.

(1) *Handicapped person* means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment, except that as it relates to employment or volunteer service the term ''handicapped person'' does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment or volunteer service, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

(2) As used in paragraph (h)(1) of this section, the phrase:

(i) *Physical or mental impairment* means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term ''physical or mental impairment'' includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(ii) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) *Is regarded as having an impairment* means (A) has a physical or mental impairment that does not substantially limit major life activities but is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (h)(2)(i) of this section but is treated by a recipient as having such an impairment.

(i) *Qualified handicapped person* means (1) with respect to employment or volunteer service, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job or assignment in question; and (2) with respect to services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(j) *Handicap* means any condition or characteristic that renders a person a handicapped person as defined in paragraph (h) of this section.

(k) *Volunteer* and ''Volunteer service'' refers to any person serving as a full time or part-time volunteer under any programs authorized under the Domestic Volunteer Service Act of 1973, Pub. L. 93–113, as amended.

(l) *Work station* means any public or private agency, institution, organization or other entity to which volunteers are assigned by a recipient.

(Sec. 504, Rehabilitation Act of 1973, Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794), sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93–516, 88 Stat. 1619 (29 U.S.C. 706); Rehabilitation Act Amendments of 1978, Pub. L. 95–602, 92 Stat. 2955; Sec. 402(14), Pub. L. 93–113, 87 Stat. 398)

[44 FR 31018, May 30, 1979; 46 FR 6951, Jan. 22, 1981]

§ 1232.4 General prohibitions against discrimination.

(a) No qualified handicapped person, shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity to which this part applies.

(b)(1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) A recipient may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(i) That have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap,

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or

(iii) That perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same state.

(4) A recipient may not, in determining the site or location of a facility, make selections:

(i) That have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from federal financial assistance or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

(d) Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

(e) Recipients shall take appropriate steps to ensure that communications with their applicants, employees, volunteers and beneficiaries are available to persons with impaired vision and hearing.

(f) Recipients shall take appropriate steps to insure that no handicapped individual is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination in any

program receiving or benefiting from Federal financial assistance from ACTION because of the absence of auxiliary aids for individuals with impaired sensory, manual, or speaking skills.

§1232.5 Assurances required.

(a) An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Director, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to ACTION. The assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(b) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(c) A recipient operating a volunteer program under which volunteers are assigned to a number of work stations shall obtain an assurance from each work station that neither volunteers nor the beneficiaries they serve will be discriminated against on the basis of handicap.

§1232.6 Notice.

Recipients shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, volunteers and employees, including those with impaired vision or hearing, that it does not discriminate on the basis of handicap in violation of section 504 and this part.

§1232.7 Remedial action, voluntary action and self-evaluation.

(a) *Remedial action.* (1) If the Director finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Director deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Director, where appropriate, may require either or both recipients to take remedial action.

(3) The Director may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action:

(i) With respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred or

(ii) With respect to handicapped persons who would have been participants in the program had the discrimination not occurred, or

(iii) With respect to handicapped persons presently in the program, but not receiving full benefits or equal and integrated treatment within the program.

(b) *Voluntary action.* Recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) Each recipient shall, within one year of the effective date of this part, conduct a self-evaluation of its compliance with Section 504, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. Each recipient shall with the assistance of and consultation with interested persons, including handicapped persons, evaluate its current policies, practices and effects thereof; modify any that do not meet the requirements of this part; and take appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Director upon request: (i) A list of the interested persons consulted,

(ii) A description of areas examined and any problems identified, and

(iii) A description of any modifications made and of any remedial steps taken.

§ 1232.8 Effect of state or local law.

The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

Subpart B—Employment and Volunteer Service Practices

§ 1232.9 General prohibitions against employment and volunteer service discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment or volunteer service under any program or activity that receives or benefits from federal financial assistance.

(b) A recipient shall make all decisions concerning employment or volunteer service under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees or volunteers in any way that adversely affects their opportunities or status because of handicap.

(c) The prohibition against discrimination in employment and volunteer service applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment or volunteer service;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment or volunteer service, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment or volunteer service.

(d) A recipient may not participate in a contractural or other relationship that has the effect of subjecting qualified handicapped applicants, volunteers or employees, to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(e) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

(f) Recipients operating a volunteer program under which volunteers are assigned to work in a number of work stations will assure that a representative sample of work stations are accessible to handicapped persons.

§ 1232.10 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant, employee or volunteer unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include: (1) Making facilities used by employees or volunteers readily accessible to and usable by handicapped persons, and

(2) Job restructuring, part-time or modified work schedules, acquisition

or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees or volunteers, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce or volunteer force, and

(3) The nature and cost of the accommodation needed.

§ 1232.11 Employment and volunteer selection criteria.

A recipient may not use employment tests or criteria that discriminate against handicapped persons and shall ensure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

§ 1232.12 Preemployment or pre-selection inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature of severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions. For the purpose of this paragraph, ''pre-employment'' as applied to applicants for volunteer positions means prior to selection as a volunteer.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 1232.8(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 1232.8(b) or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment or volunteer service to indicate whether and to what extent they are handicapped: *Provided,* That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment or volunteer service on the results of a medical examination conducted prior to the volunteer or employee's entrance on duty. *Provided,* That:

(1) All entering volunteers or employees are subjected to such an examination regardless of handicap, and

(2) The results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officers investigating compliance with the Act shall be provided relevant information upon request.

Subpart C—Program Accessibility

§ 1232.13 General requirement concerning program accessibility.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance.

§ 1232.14 Existing facilities.

(a) A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible and usable by handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. Where structural changes are necessary to make programs or activities in existing facilities accessible, such changes shall be made as soon as practicable, but in no event later than three years after the effective date of the regulation.

(c) In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan which sets forth in detail the steps necessary to complete the changes, and a schedule for taking those steps. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the plan shall be made available for public inspection.

§ 1232.15 New construction.

(a) *Design, construction, and alteration.* New facilities shall be designed and constructed to be readily accessible to and usable by handicapped persons. construction shall be considered new if ground breaking takes place after the effective date of the regulation. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped persons.

(b) *Conformance with Uniform Federal Accessibility Standards.* (1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (USAF) (appendix A to 41 CFR subpart 101–19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

[44 FR 31018, May 30, 1979, as amended at 55 FR 52138, 52142, Dec. 19, 1990]

Subpart D—Procedures

§ 1232.16 Procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in §§ 1203.6 through 1203.11 of this title.

PART 1233—INTERGOVERNMENTAL REVIEW OF ACTION PROGRAMS

Sec.

AUTHORITY: E.O. 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); sec. 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6505).

SOURCE: 48 FR 29284, June 24, 1983, unless otherwise noted.

EDITORIAL NOTE: For additional information, see related documents published at 47 FR 57369, December 23, 1982, 48 FR 17101, April 21, 1983, and 48 FR 29096, June 24, 1983.

§1233.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' issued July 14, 1982, and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed federal financial assistance.

(c) These regulations are intended to aid the internal management of the Agency, and are not intended to create any right or benefit enforceable at law by a party against the Agency or its officers.

§1233.2 What definitions apply to these regulations?

Agency means ACTION, the National Volunteer Agency.

Order means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled ''Intergovernmental Review of Federal Programs.''

Director means the Director of ACTION, or an official or employee of the Agency acting for the Director under a delegation of authority.

State means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§1233.3 What programs of the Agency are subject to these regulations?

The Director publishes in the FEDERAL REGISTER a list of the Agency's programs that are subject to these regulations.

§1233.4 [Reserved]

§1233.5 What is the Director's obligation with respect to federal interagency coordination?

The Director, to the extent practicable, consults with and seeks advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and ACTION regarding programs covered under these regulations.

§1233.6 What procedures apply to the selection of programs under these regulations?

(a) A state may select any ACTION program published in the FEDERAL REGISTER in accordance with §1233.3 of this part for intergovernmental review under these regulations. Each state, before selecting programs and activities, shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Director of the Agency's programs selected for that process.

(c) A state may notify the Director of changes in its selections at any time. For each change, the state shall submit to the Director an assurance that the state has consulted with local elected officials regarding the change. The Agency may establish deadlines by which states are required to inform the Director of changes in their program selections.

(d) The Director uses a state's process as soon as feasible, depending on individual programs, after the Director is notified of its selections.

§ 1233.7 How does the Director communicate with state and local officials concerning the Agency's programs?

(a) The Director provides opportunities for consultation by elected officials of those state and local governments that would provide the nonfederal funds for, or that would be directly affected by, proposed federal financial assistance from the Agency. For those programs covered by a state process under § 1233.6, the Director, to the extent permitted by law:

(1) Uses the official state process to determine views of state and local elected officials; and,

(2) Communicates with state and local elected officials, through the official state process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(b) The Director provides notice to directly affected state, areawide, regional, and local entities in a state of proposed federal financial assistance if:

(1) The state has not adopted a process under the Order; or

(2) The assistance involves a program not selected for the state process.

This notice may be made by publication in the FEDERAL REGISTER, or other appropriate means, which the Agency in its discretion deems appropriate.

§ 1233.8 How does the Director provide states an opportunity to comment on proposed federal financial assistance?

(a) Except in unusual circumstances, the Director gives state processes or directly affected state, areawide, regional and local officials and entities:

(1) At least 30 days from the date established by the Director to comment on proposed federal financial assistance in the form of noncompeting continuation awards; and

(2) At least 60 days from the date established by the Director to comment on proposed federal financial assistance other than noncompeting continuation awards.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Agency have been delegated.

§ 1233.9 How does the Director receive and respond to comments?

(a) The Director follows the procedures in § 1233.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies, and

(2) That office or official transmits a state process recommendation for a program selected under § 1233.6.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Agency, or both.

(d) If a program is not selected for a state process, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Agency, or both. In addition, if a state process recommendation for a nonselected program is transmitted to the Agency by the single point of contact, the Director follows the prodecures of § 1233.10 of this part.

(e) The Director considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Director is not required to apply the procedures of § 1233.10 of this part, when such comments are provided by a single point of contact, by the applicant, or directly to the Agency by a commenting party.

§ 1233.10 How does the Director make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Agency through its single point of contact, the Director either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with a written explanation of the Agency's decision, in such form as the Director in his or her discretion deems appropriate. The Director may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Director informs the single point of contact that:

(1) The Agency will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Director has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purpose of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§§ 1233.11—1233.12 [Reserved]

§ 1233.13 May the Director waive any provision of these regulations?

In an emergency, the Director may waive any provision of these regulations.

PART 1234—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Subpart B—Pre-Award Requirements

Subpart C—Post-Award Requirements

Subpart D—After-the-Grant Requirements

Subpart E—Entitlements [Reserved]

AUTHORITY: Pub. L. 93–113; 42 U.S.C. 4951, *et seq;* 42 U.S.C. 5060.

SOURCE: 53 FR 8084 and 8087, Mar. 11, 1988, unless otherwise noted.

EDITORIAL NOTE: For additional information, see related documents published at 49 FR 24958, June 18, 1984, 52 FR 20178, May 29, 1987, and 53 FR 8028, March 11, 1988.

Subpart A—General

§ 1234.1 Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

§ 1234.2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§ 1234.3 Definitions.

As used in this part:

Accrued expenditures mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

Accrued income means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

Acquisition cost of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

Administrative requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from ''*programmatic*'' requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

Awarding agency means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

Cash contributions means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

Contract means (except as used in the definitions for ''*grant*'' and ''*subgrant*'' in this section and except where qualified by ''*Federal*'') a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

Cost sharing or matching means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

Cost-type contract means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

Equipment means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

Expenditure report means: (1) For nonconstruction grants, the SF–269 ''Financial Status Report'' (or other equivalent report); (2) for construction grants, the SF–271 ''Outlay Report and Request for Reimbursement'' (or other equivalent report).

Federally recognized Indian tribal government means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement

Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

Government means a State or local government or a federally recognized Indian tribal government.

Grant means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

Grantee means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

Local government means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

Obligations means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

OMB means the United States Office of Management and Budget.

Outlays (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of inkind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

Percentage of completion method refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

Prior approval means documentation evidencing consent prior to incurring specific cost.

Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Share, when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

Subgrant means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial

assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of ''*grant*'' in this part.

Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Supplies means all tangible personal property other than ''*equipment*'' as defined in this part.

Suspension means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

Termination means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. ''*Termination*'' does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period; (2) Withdrawal of the unobligated balance as of the expiration of a grant; (3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

Terms of a grant or subgrant mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

Third party in-kind contributions mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

Unliquidated obligations for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ 1234.4 Applicability.

(a) *General.* Subparts A through D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of § 1234.6, or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under title V, subtitle D, chapter 2, section 583—the Secretary's discretionary grant program) and titles I–III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and part C of title V, Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (title IV–A of the Act, not including the Work Incentive

Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (title IV–D of the Act);

(iii) Foster Care and Adoption Assistance (title IV–E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (titles I, X, XIV, and XVI–AABD of the Act); and

(v) Medical Assistance (Medicaid) (title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service for Children (section 13 of the Act), and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U.S.C. 236 through 241–1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) *Entitlement programs.* Entitlement programs enumerated above in §1234.4(a) (3) through (8) are subject to Subpart E.

§ 1234.5 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in §1234.6.

§ 1234.6 Additions and exceptions.

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the FEDERAL REGISTER.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

Subpart B—Pre-Award Requirements

§ 1234.10 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF–424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

§ 1234.11 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect: (1) New or revised Federal statutes or regulations or (2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ 1234.12 Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered ''high risk'' if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grante or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

Subpart C—Post-Award Requirements

FINANCIAL ADMINISTRATION

§ 1234.20 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

§ 1234.21 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR Part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 1234.43(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent

by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

§ 1234.22 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a—	Use the principles in—
State, local or Indian tribal government.	OMB Circular A–87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A–122 as not subject to that circular.	OMB Circular A–122.
Educational institutions.	OMB Circular A–21.
For-profit organization other than a hospital and an organization named in OBM Circular A–122 as not subject to that circular.	48 CFR Part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

§ 1234.23 Period of availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF–269). The Federal agency may extend this deadline at the request of the grantee.

§ 1234.24 Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) *Qualifications and exceptions*—(1) *Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in § 1234.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 1234.25(g).)

(5) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services*—(1) *Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services

are in a different line of work, paragraph (c)(1) of this section applies.

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching,

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2) (i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 1234.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§ 1234.25 Program income.

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of

the grant agreement during the grant period. ''During the grant period'' is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income.* If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § 1234.34.)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ 1234.31 and 1234.32.

(g) *Use of program income.* Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction.* Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) *Income after the award period.* There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

§ 1234.26 Non-Federal audit.

(a) *Basic rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501–7) and Federal agency implementing regulations. The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act, that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subgrantee shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A–110, ''Uniform Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations'' have met the audit requirement. Commercial contractors (private forprofit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local govenments

should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A–110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, §1234.36 shall be followed.

CHANGES, PROPERTY, AND SUBAWARDS

§1234.30 Changes.

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see §1234.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes*—(1) *Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds $100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of §1234.36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget formal the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § 1234.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

§ 1234.31 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§ 1234.32 Equipment.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When

no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in §1234.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title.* The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow § 1234.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§ 1234.33 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

§ 1234.34 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§ 1234.35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, ''Debarment and Suspension.''

§ 1234.36 Procurement.

(a) *States.* When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of

nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative anaylsis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards

of § 1234.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a ''brand name'' product instead of allowing ''an equal'' product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a ''brand name or equal'' description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed*—(1) *Procurement by small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than $25,000 in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 1234.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals.* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price resonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see §1234.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solication has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this seciton; or

(ii) The procurement is expected to exceed $25,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed $25,000, specifies a ''brand name'' product; or

(iv) The proposed award over $25,000 is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than $25,000.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subconstracts exceeding $100,000, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The ''bid guarantee'' shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A ''performance bond'' is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A ''payment bond'' is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate (Contracts other than small purchases).

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement (All contracts in excess of $10,000).

(3) Compliance with Executive Order 11246 of September 24, 1965 entitled ''Equal Employment Opportunity,'' as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR chapter 60) (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees).

(4) Compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3) (All contracts and subgrants for construction or repair).

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) as supplemented by Department of Labor regulations (29 CFR part 5) (Construction

contracts in excess of $2,000 awarded by grantees and subgrantees when required by Federal grant program legislation).

(6) Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15) (Contracts, subcontracts, and subgrants of amounts in excess of $100,000).

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163).

§ 1234.37 Subgrants.

(a) *States.* States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with § 1234.42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grantees.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section 1234.10;

(2) Section 1234.11;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR part 205, cited in § 1234.21; and

(4) Section 1234.50.

REPORTS, RECORDS, RETENTION, AND ENFORCEMENT

§ 1234.40 Monitoring and reporting program performance.

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

§ 1234.41 Financial reporting.

(a) *General.* (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extend required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report*—(1) *Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with § 1234.41(e)(2)(iii).

(2) *Accounting basis.* Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accural basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) *Frequency.* The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) *Due date.* When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report*—(1) *Form.* (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the ''Remarks'' section of the report.

(3) *Cash in hands of subgrantees.* When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash

advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement*—(1) *Advance payments.* Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in § 1234.41(b)(3).

(e) *Outlay report and request for reimbursement for construction programs.* (1) *Grants that support construction activities paid by reimbursement method.* (i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in § 1234.41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in § 1234.41(b)(3).

(2) *Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.* (i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by § 1234.41(b) (3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in § 1234.41(d).

(iii) The Federal agency may substitute the Financial Status Report specified in § 1234.41(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 1234.41(b)(2).

§ 1234.42 Retention and access requirements for records.

(a) *Applicability*. (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § 1234.36(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) *Starting date of retention period*—(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records*—(1) *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

§ 1234.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to ''Debarment and Suspension'' under E.O. 12549 (see § 1234.35).

§ 1234.44 Termination for convenience.

Except as provided in § 1234.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § 1234.43 or paragraph (a) of this section.

Subpart D—After-The-Grant Requirements

§ 1234.50 Closeout.

(a) *General.* The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) *Reports.* Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) *Final performance or progress report.*

(2) *Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF–271) (as applicable).*

(3) *Final request for payment (SF–270) (if applicable).*

(4) *Invention disclosure (if applicable).*

(5) *Federally-owned property report:*

In accordance with § 1234.32(f), a grantee must submit an inventory of all federally owned property (as distinct from

property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§ 1234.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § 1234.42;

(d) Property management requirements in §§ 1234.31 and 1234.32; and

(e) Audit requirements in § 1234.26.

§ 1234.52 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an adminstrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E—Entitlement [Reserved]

PART 1235—LOCALLY GENERATED CONTRIBUTIONS IN OLDER AMERICAN VOLUNTEER PROGRAMS

Sec.

AUTHORITY: 42 U.S.C. 5024; 42 U.S.C. 5060.

SOURCE: 56 FR 4732, Feb. 6, 1991, unless otherwise noted.

§ 1235.1 Definitions.

As used in this part and in section 224 of the Domestic Volunteer Service Act of 1973, as amended, the following definitions shall apply:

(a) *Director* means the Director of ACTION.

(b) *Locally Generated Contributions* means all contributions generated by the grantee in support of the grant, including non-ACTION Federal, State, local government and privately raised contributions.

(c) *Amount Required by the Director* means the proportion of the non-Federal contribution (including in-kind contributions) for a grant or contract made under the Domestic Volunteer Service Act of 1973, as amended, required by the Director in order to receive ACTION funds. This proportion is generally 10% for the Foster Grandparent Program/Senior Companion Program (FGP/SCP) and generally 10%, 20% and 30% for the Retired Senior Volunteer Program (RSVP) in the first, second, and subsequent years respectively. The ''amount required by the Director'' is also called the ''local match.''

(d) *In Excess of the Amount Required by the Director* means of the total locally generated contributions, the amount over and above the percentage match (generally 10% for FGP/SCP and 10%, 20% and 30% for RSVP in the first,

second, and subsequent years respectively) required by the Director of ACTION to be raised from non-ACTION sources to support the grant.

(e) *Inconsistent with the Provisions of This Act* means expenditures not in support of ACTION programs, as defined by the Domestic Volunteer Service Act of 1973, as amended. For example:

(1) Inconsistency with the age threshold for volunteers for all Older American Volunteer Programs (OAVP);

(2) Inconsistency with the low income test for the FGP and SCP programs;

(3) Variations from the approved stipend levels for the FGP and SCP programs;

(4) Inconsistency with the prohibition against political activity under all the OAVP programs; and/or

(5) Unreasonable cost for a low-cost volunteer program.

§ 1235.2 Implementation guidance.

ACTION's implementation of section 224 of the DVSA is based on fundamental principles regarding the Congressional intent of the Section as well as the Executive Branch's policy on Federal financial assistance to grantees. These principles include:

(a) That ACTION may not restrict grantees' use of excess contributions as long as those expenditures are ''not inconsistent'' with the Domestic Volunteer Service Act of 1973, as amended;

(b) That grantees are to fully account for and document expenditures of non-Federal contributions, regardless of whether they are used to meet ACTION's local match requirement or are in excess of the requirement; and

(c) That all expenditures in support of a Federal grant can be audited by the responsible Federal Agency or by independent auditors performing audits pursuant to OMB Circulars A–128 and A–133. Copies of OMB Circulars A–128 and A–133 are available at ACTION, 1100 Vermont Avenue, NW., Room 9200, Washington, DC 20525.

§ 1235.3 Statement of policy.

(a) Expenditures of locally generated non-Federal contributions required by the Director as matching funds must meet the requirements specified in ACTION's Grant Management and Program Operations Handbook, ACTION Order 2650.2, as amended, and the Domestic Volunteer Service Act of 1973, as amended. Copies of ACTION's Grants Management and Program Operations Handbook, ACTION Order 2650.2, as amended, are available at ACTION, 1100 Vermont Avenue, NW., Room 9200, Washington, DC 20525.

(b) All expenditures by the grantee of Federal and non-Federal funds (including expenditures from excess locally generated contributions) in support of the grant are subject to ACTION authorized audits.

(c) ACTION will not restrict the manner in which locally generated contributions in excess of the required match are expended if these expenditures are not inconsistent with the Domestic Volunteer Service Act of 1973, as amended.

APPENDIX TO PART 1235—PROCEDURES TO RESOLVE QUESTIONED COSTS

I. Because implementation of section 224 may impact on how questioned costs are treated when raised in the context of an audit or program monitoring exercise, this appendix explains how questioned costs will be resolved. This part does not create any new auditing requirements.

II. All expenditures in support of a federal grant may be reviewed by an authorized audit or program monitoring review. Adequate financial records and supporting documentation must be maintained for both cash and in-kind contributions. (See ACTION's Grants Management Handbook for Grantees, ACTION Order 2650.2)

III. Three definitions are important to understand in relation to resolution of questioned costs:

(a) The term ''questioned cost'', pursuant to the Inspector General Act of 1978, as amended, 5 U.S.C. Appendix 3, means an expenditure of grant funds that is questioned because of:

(1) An alleged violation of a provision of the Domestic Volunteer Service Act of 1973, as amended, or other law, regulation, or grant governing the expenditure of funds by the grantee;

(2) A finding that at the time of an audit or program review the cost is not supported by adequate documentation; or

(3) A finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable.

(b) The term ''disallowed cost'' means a questioned cost related to federal or local

match expenditures that ACTION management, in a management decision, has sustained or agreed should not be charged to the Government.

(c) The term ''program finding'' means a questioned cost identified as from the grantee's excess locally generated contributions which is referred to ACTION program management for consideration.

IV. When costs are questioned from locally generated contributions, a distinction will be made between costs as part of the *local match* and costs as part of the *excess contribution*.

V. Normally, when expenditures of Federal or non-Federal local match funds are questioned, a management decision is made to either allow or disallow the costs. When an expenditure of excess locally generated funds is questioned, however, it will not be treated as a potential disallowed cost but identified as a program finding and referred to ACTION program management for resolution.

VI. Program findings may include, but are not limited to:

(a) Inadequate records to document the expenditures and provide assurance of the grantee's internal controls over the use of its cash and in-kind contributions; and

(b) Evidence that expenditures were made that are inconsistent with the Domestic Volunteer Service Act of 1973, as amended.

VII. Once program findings are determined by ACTION program management, decisions may be made to take corrective steps, including but not limited to:

(a) Requiring the grantee to adhere to stated program goals and objectives as a condition for future funding;

(b) Requiring the grantee to adopt a stronger financial management and control system.

Based on past experience, it is expected that corrective steps will be needed only in rare instances.

VIII. If the grantee has raised locally generated contributions in excess of the matching requirement and those expenditures are not questioned, and are consistent with the DVSA of 1973, as amended, for local match expenditures, they may be substituted for any disallowed portion of local match costs in order for the grantee to meet its matching requirement.

CHAPTER XIII—OFFICE OF HUMAN DEVELOPMENT SERVICES, DEPARTMENT OF HEALTH AND HUMAN SERVICES

SUBCHAPTER A—OFFICE OF HUMAN DEVELOPMENT SERVICES, GENERAL PROVISIONS [RESERVED]

SUBCHAPTER B—THE ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES, HEAD START PROGRAM

SUBCHAPTER C—THE ADMINISTRATION ON AGING, OLDER AMERICANS PROGRAMS

SUBCHAPTER A—OFFICE OF HUMAN DEVELOPMENT SERVICES, GENERAL PROVISIONS [RESERVED]

SUBCHAPTER B—THE ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES, HEAD START PROGRAM

PART 1301—HEAD START GRANTS ADMINISTRATION

Subpart A—General

Subpart B—General Requirements

Subpart C—Federal Financial Assistance

Subpart D—Personnel and General Administration

AUTHORITY: 42 U.S.C. 9831 et seq.

SOURCE: 44 FR 24061, Apr. 24, 1979, unless otherwise noted.

Subpart A—General

§1301.1 Purpose and scope.

This part establishes regulations applicable to program administration and grants management for all grants under the Act, including grants for technical assistance and training and grants for research, demonstration, and pilot projects.

§1301.2 Definitions.

For the purposes of this part, unless the context requires otherwise:

Act means title V of the Economic Opportunity Act of 1964, as amended.

Budget period means the interval of time, into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes.

Community means a city, county, a multi-city or multi-county unit within a state, an Indian reservation, or any neighborhood or other geographic area (irrespective of boundaries or political subdivisions) which provides a suitable organizational base and possesses the commonality of interest needed to operate a Head Start program.

Delegate agency means a public or private non-profit organization or agency to which a grantee has delegated all or part of its responsibility for operating a Head Start program.

Development and administrative costs mean costs incurred in accordance with an approved Head Start budget which do not directly relate to the provision of program component services, including services to children with disabilities, as set forth and described in the Head Start program performance standards (45 CFR part 1304).

Dual benefit costs mean costs incurred in accordance with an approved Head Start budget which directly relate to both development and administrative functions and to the program component services, including services to children with disabilities, as set forth and described in the Head Start program performance standards (45 CFR part 1304).

Head Start Agency or ''grantee'' means a local public or private nonprofit agency designated to operate a Head Start program by the responsible HHS official, in accordance with part 1302 of this chapter.

Head Start program means a program, funded under the Act and carried out by a Head Start agency or a delegate agency, that provides ongoing comprehensive child development services.

Independent auditor means an individual accountant or an accounting firm,

public or private agency, association, corporation, or partnership, that is sufficiently independent of the agency being audited to render objective and unbiased opinions, conclusions, and judgments.

Indirect costs mean those costs of a Head Start agency, as approved by the cognizant agency, the agency which has authority to set the grantee's indirect cost rate, which are not readily identifiable with a particular project or program but nevertheless are necessary to the general operation of the agency and the conduct of its activities.

Major disaster means any natural disaster or catastrophe which is of such severity and magnitude as to directly affect the capability of the Head Start agency of agencies providing Head Start programs to the damaged community to continue the programs without an increase in the Federal share above 80 percent.

Program costs mean costs incurred in accordance with an approved Head Start budget which directly relate to the provision of program component services, including services to children with disabilities, as set forth and described in the Head Start Program Performance Standards (45 CFR part 1304).

Responsible HHS official means the official of the Department of Health and Human Services who has authority to make grants under the Act.

Total approved costs mean the sum of all costs of the Head Start program approved for a given budget period by the Administration on Children, Youth and Families, as indicated on the Financial Assistance Award. Total approved costs consist of the Federal share plus any approved non-Federal share, including non-Federal share above the statutory minimum.

[44 FR 24061, Apr. 24, 1979, as amended at 57 FR 41884, Sept. 14, 1992]

Subpart B—General Requirements

§ 1301.10 General.

(a) Except as specified in paragraph (b) of this section, the following HHS regulations shall apply to all grants made under the Act:

45 CFR part 16 Department grant appeals process (except as provided in § 1301.34)

45 CFR part 46 Protection of Human Subjects

45 CFR part 74 Administration of grants

45 CFR part 75 Informal grant appeals procedures (Indirect cost rates and other cost allocations)

45 CFR part 80 Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—Effectuation of title VI of the Civil Rights Act of 1964

45 CFR part 81 Practice and procedure for hearings under part 80

45 CFR part 84 Nondiscrimination on the basis of handicap in Federally assisted programs.

(b) 45 CFR part 74 is superseded as follows:

(1) Section 1301.11 of this subpart supersedes § 74.15 of part 74 with respect to insurance and bonding of private, non-profit Head Start agencies; and

(2) Section 1301.12 of this subpart supersedes § 74.61 of part 74 with respect to audit requirements for all Head Start agencies.

§ 1301.11 Insurance and bonding.

(a) Private nonprofit Head Start agencies and their delegate agencies shall carry reasonable amounts of student accident insurance, liability insurance for accidents of their premises, and transportation liability insurance.

(b) Private nonprofit Head Start and delegate agencies shall make arrangements for bonding officials and employees authorized to disburse program funds.

§ 1301.12 Annual audit of Head Start programs.

(a) An audit of the Head Start program covering the prior budget period of each Head Start agency and its delegate agencies, if any, shall be made by an independent auditor to determine:

(1) Whether the agency's financial statements are accurate;

(2) Whether the agency is complying with the terms and conditions of the grant; and

(3) Whether appropriate financial and administrative procedures and controls have been installed and are operating effectively. Head Start agencies shall either include delegate agency audits as a part of their own audits or provide

for separate independent audits of their delegate agencies.

(b) Upon a written request showing necessity, the responsible HHS official may approve a period other than the prior budget period to be covered by the annual audit.

(c) Unless otherwise approved by the responsible HHS official, the report of the audit shall be submitted to the responsible HHS official, in the manner and form prescribed by him or her, within 4 months after the prior budget period.

§ 1301.13 Accounting system certification.

(a) Upon request by the responsible HHS official, each Head Start agency or its delegate agency shall submit an accounting system certification, prepared by an independent auditor, stating that the accounting system or systems established by the Head Start agency, or its delegate, has appropriate internal controls for safeguarding assets, checking the accuracy and reliability of accounting data, and promoting operating efficiency.

(b) A Head Start agency shall not delegate any of its Head Start program responsibilities to a delegate agency prior to receiving a certification that the delegate agency's accounting system meets the requirements specified in paragraph (a) of this section.

Subpart C—Federal Financial Assistance

§ 1301.20 Matching requirements.

(a) Federal financial assistance granted under the act for a Head Start program shall not exceed 80 percent of the total costs of the program, unless:

(1) An amount in excess of that percentage is approved under section 1301.21; or

(2) The Head Start agency received Federal financial assistance in excess of 80 percent for any budget period falling within fiscal year 1973 or fiscal year 1974. Under the circumstances described in clause

(3) Of the preceding sentence, the agency is entitled to receive the same percentage of Federal financial assistance that it received during such budget periods.

(b) The non-Federal share will not be required to exceed 20 percent of the total costs of the program.

(c) Federal financial assistance awarded to Head Start grantees for training and technical assistance activities shall be included in the Federal share in determining the total approved costs of the program. Such financial assistance is, therefore, subject to the 20 percent non-Federal matching requirement of this subpart.

[44 FR 24061, Apr. 24, 1979, as amended at 57 FR 41884, Sept. 14, 1992]

§ 1301.21 Criteria for increase in Federal financial assistance.

The responsible HHS official, on the basis of a written application and any supporting evidence he or she may require, will approve financial assistance in excess of 80 percent if he or she concludes that the Head Start agency has made a reasonable effort to meet its required non-Federal share but is unable to do so; and the Head Start agency is located in a county:

(a) That has a personal per capita income of less that $3,000 per year; or

(b) That has been involved in a major disaster.

Subpart D—Personnel and General Administration

§ 1301.30 General requirements.

Head Start agencies and delegate agencies shall conduct the Head Start program in an effective and efficient manner, free of political bias or family favoritism. Each agency shall also provide reasonable public access to information and to the agency's records pertaining to the Head Start program.

§ 1301.31 Personnel policies.

(a) Head Start agencies must establish and implement personnel policies for themselves and their delegate agencies. At a minimum, such policies must govern the following: staff qualifications, recruitment and selection, classification of positions, salaries, employee benefits (including leave, holidays, overtime, and fringe benefits),

conflicts of interest, official travel, career development, performance evaluations, and employee management relations (including employee grievances and adverse actions).

(b) The policies must be in writing, approved by the Head Start Policy Council or Committee, and made available to all Head Start grantee and delegate agency employees.

(c) The policies must require that all prospective employees must sign a declaration prior to employment which lists:

(1) All pending and prior criminal arrests and charges related to child sexual abuse and their disposition;

(2) Convictions related to other forms of child abuse and/or neglect; and

(3) All convictions of violent felonies.

(d) The declaration required by paragraph (c) of this section may exclude:

(1) Traffic fines of $50.00 or less;

(2) Any offense, other than any offense related to child abuse and/or child sexual abuse or violent felonies, committed before the prospective employee's 18th birthday, which was finally adjudicated in a juvenile court or under a youth offender law;

(3) Any conviction the record of which has been expunged under Federal or State law; and

(4) Any conviction set aside under the Federal Youth Corrections Act or similar State authority.

(e) The policies governing recruitment and selection of staff must require that before an employee is hired for a probationary period, the grantee or delegate agency will have conducted:

(1) An interview of the applicant, and

(2) A check of personal and employment references provided by the applicant, including verification of the accurary of the information provided by the applicant.

(f) The policies governing recruitment and selection of staff must provide for a probationary period for all new employees that allows time to monitor employee performance and to examine and act on the results of criminal record checks discussed in paragraph (g) of this section.

(g)(1) The personal policies governing recruitment and selection of permanent Head Start staff must require that before staff are hired on a permanent basis, the grantee or delegate agency will have conducted a State and/or national criminal record check if required by State law and/or administrative requirement.

(2) An agency must not adopt an arbitrary policy of refusal to hire solely on the basis of arrest, a pending criminal charge, or a conviction. The agency must review each case in order to assess the relevancy of an arrest charge or conviction to a hiring decision.

(h) Grantees or delegate agencies must develop a plan for responding to suspected or known child abuse or sexual abuse of Head Start children whether it occurs inside or outside the program. The policy was originally promulgated in the January 26, 1977 FEDERAL REGISTER (42 FR 4970–4971), ''Identification and Reporting of Child Abuse and Neglect,'' and is published as an appendix to this section.

(Approved by the Office of Management and Budget under control number 0980–0173)

[53 FR 5979, Feb. 29, 1988]

APPENDIX A TO § 1301.31—IDENTIFICATION AND REPORTING OF CHILD ABUSE AND NEGLECT

The Chapter N–30–356–1 in the Head Start Policy Manual reads as follows:

N–30–356–1–00 Purpose.
10 Scope.
20 Applicable law and policy.
30 Policy.

AUTHORITY: 80 Stat. 2304 (42 U.S.C. 2928h).

N–30–356–1–00 *Purpose.* This chapter sets forth the policy governing the prevention, identification, treatment, and reporting of child abuse and neglect in Head Start.

N–30–356–1–10 *Scope.* This policy applies to all Head Start and delegate agencies that operate or propose to operate a Full-Year or Summer Head Start program, or experimental or demonstration programs funded by Head Start. This issuance constitutes Head Start policy and noncompliance with this policy will result in appropriate action by the responsible HEW official.

N–30–356–1–20 *Applicable law and policy.* Section 511 of the Headstart-Follow Through Act, Pub. L. 93–644, requires Head Start agencies to provide comprehensive health, nutritional educational, social and other services to the children to attain their full potential. The prevention, identification, treatment, and reporting of child abuse and neglect is a part of the social services in Head Start. In order for a State to be eligible for grants

under the Child Abuse Prevention and Treatment Act (hereinafter called ''the Act''), Pub. L. 93–247, the State must have a child abuse and neglect reporting law which defines ''child abuse and neglect'' substantially as that term is defined in the regulations implementing the Act, 45 CFR 1340.1–2(b). That definition is as follows:

A. ''(b) 'Child abuse and neglect' means harm or threatened harm to a child's health or welfare by a person responsible for the child's health or welfare.

''1. 'Harm or threatened harm to a child's health or welfare' can occur through: Nonaccidental physical or mental injury; sexual abuse, as defined by State law; or neglectful treatment or maltreatment, including the failure to provide adequate food, clothing, or shelter. Provided, however, that a parent or guardian legitimately practicing his religious beliefs who thereby does not provide specified medical treatment for a child, for that reason alone shall not be considered a negligent parent or guardian; however, such an exception shall not preclude a court from ordering that medical services to be provided to the child, where his health requires it.

''2. 'Child' means a person under the age of eighteen.

''3. 'A person responsible for a child's health or welfare' includes the child's parent, guardian, or other person responsible for the child's health or welfare, whether in the same home as the child, a relative's home, a foster care home, or a residential institution.''

In addition, among other things, the State would have to provide for the reporting of known or suspected instances of child abuse and neglect.

It is to be anticipated that States will attempt to comply with these requirements. However, a Head Start program, in dealing with and reporting child abuse and neglect, will be subject to and will act in accordance with the law of the State in which it operates whether or not that law meets the requirements of the Act. Thus, it is the intention of this policy in the interest of the protection of children to insure compliance with and, in some respects, to supplement State or local law, not to supersede it. Thus, the phrase ''child abuse and neglect,'' as used herein, refers to both the definition of abuse and neglect under applicable State or local law, and the evidentiary standard required for reporters under applicable State or local law.

N–30–356–1–30 *Policy*—A. *General provisions.* 1. Head start agencies and delegate agencies must report child abuse and neglect in accordance with the provisions of applicable State or local law.

a. In those States and localities with laws which require such reporting by pre-school and day care staff, Head Start agencies and delegate agencies must report to the State or local agencies designated by the State under applicable State or local Child Abuse and Neglect reporting law.

b. In those States and localities in which such reporting by pre-school and day care staff is ''permissive'' under State or local law, Head Start agencies and delegate agencies must report child abuse and neglect if applicable State or local law provides immunity from civil and criminal liability for goodfaith voluntary reporting.

2. Head Start agencies and delegate agencies will preserve the confidentiality of all records pertaining to child abuse or neglect in accordance with applicable State or local law.

3. Consistent with this policy, Head Start programs will not undertake, on their own, to treat cases of child abuse and neglect. Head Start programs will, on the other hand, cooperate fully with child protective service agencies in their communities and make every effort to retain in their programs children allegedly abused or neglected—recognizing that the child's participation in Head Start may be essential in assisting families with abuse or neglect problems.

4. With the approval of the policy council, Head Start programs may wish to make a special effort to include otherwise eligible children suffering from abuse or neglect, as referred by the child protective services agency.

However, it must be emphasized that Head Start is not nor is it to become a primary instrument for the treatment of child abuse and neglect. Nevertheless, Head Start has an important preventative role to play in respect to child abuse and neglect.

B. *Special provisions*—1. *Staff responsibility*. Directors of Head Start agencies and delegate agencies that have not already done so shall immediately designate a staff member who will have responsibility for:

a. Establishing and maintaining cooperative relationships with the agencies providing child protective services in the community, and with any other agency to which child abuse and neglect must be reported under State law, including regular formal and informal communication with staff at all levels of the agencies;

b. Informing parents and staff of what State and local laws require in cases of child abuse and neglect;

c. Knowing what community medical and social services are available for families with an abuse or neglect problem;

d. Reporting instances of child abuse and neglect among Head Start children reportable under State law on behalf of the Head Start program;

e. Discussing the report with the family if it appears desirable or necessary to do so;

f. Informing other staff regarding the process for identifying and reporting child abuse and neglect. (In a number of States it is a

statutory requirement for professional child-care staff to report abuse and neglect. Each program should establish a procedure for identification and reporting.)

2. *Training.* Head Start agencies and delegate agencies shall provide orientation and training for staff on the identification and reporting of child abuse and neglect. They should provide an orientation for parents on the need to prevent abuse and neglect and provide protection for abused and neglected children. Such orientation ought to foster a helpful rather than a punitive attitude toward abusing or neglecting parents and other caretakers.

[53 FR 5979, Feb. 29, 1988]

§ 1301.32 Limitations on costs of development and administration of a Head Start program.

(a) *General provisions.* (1) Allowable costs for developing and administering a Head Start program may not exceed 15 percent of the total approved costs of the program, unless the responsible HHS official grants a waiver approving a higher percentage for a specific period of time not to exceed twelve months.

(2) The limit of 15 percent for development and administrative costs is a maximum. In cases where the costs for development and administration are at or below 15 percent, but are judged by the responsible HHS official to be excessive, the grantee must eliminate excessive development and administrative costs.

(b) *Development and administrative costs.* (1) Costs classified as development and administrative costs are those costs related to the overall management of the program. These costs can be in both the personnel and non-personnel categories.

(2) Grantees must charge the costs of organization-wide management functions as development and administrative costs. These functions include planning, coordination and direction; budgeting, accounting, and auditing; and management of purchasing, property, payroll and personnel.

(3) Development and administrative costs include, but are not limited to, the salaries of the executive director, personnel officer, fiscal officer/bookkeeper, purchasing officer, payroll/insurance/property clerk, janitor for administrative office space, and costs associated with volunteers carrying out administrative functions.

(4) Other development and administrative costs include expenses related to administrative staff functions such as the costs allocated to fringe benefits, travel, per diem, transportation and training.

(5) Development and administrative costs include expenses related to bookkeeping and payroll services, audits, and bonding; and, to the extent they support development and administrative functions and activities, the costs of insurance, supplies, copy machines, postage, and utilities, and occupying, operating and maintaining space.

(c) *Program costs.* Program costs include, but are not limited to:

(1) Personnel and non-personnel costs directly related to the provision of program component services and component training and transportation for staff, parents and volunteers;

(2) Costs of functions directly associated with the delivery of program component services through the direction, coordination or implementation of a specific component;

(3) Costs of the salaries of program component coordinators and component staff, janitorial and transportation staff involved in program component efforts, and the costs associated with parent involvement and component volunteer services; and

(4) Expenses related to program staff functions, such as the allocable costs of fringe benefits, travel, per diem and transportation, training, food, center/classroom supplies and equipment, parent activities funds, insurance, and the occupation, operation and maintenance of program component space, including utilities.

(d) *Dual benefit costs.* (1) Some costs benefit both the program components as well as development and administrative functions within the Head Start program. In such cases, grantees must identify and allocate appropriately the portion of the costs that are for development and administration.

(2) Dual benefit costs include, but are not limited to, salaries, benefits and other costs (such as travel, per diem, and training costs) of staff who perform both program and development and administrative functions. Grantees

must determine and allocate appropriately the part of these costs dedicated to development and administration.

(3) Space costs, and costs related to space, such as utilities, are frequently dual benefit costs. The grantee must determine and allocate appropriately the amount or percentage of space dedicated to development and administration.

(e) *Relationship between development and administrative costs and indirect costs.* (1) Grantees must categorize costs in a Head Start program as development and administrative or program costs. These categorizations are separate from the decision to charge such costs directly or indirectly.

(2) Grantees must charge all costs, whether program or development and administrative, either directly to the project or as part of an indirect cost pool.

(f) *Requirements for compliance.* (1) Head Start grantees must calculate the percentage of their total approved costs allocated to development and administration as a part of their budget submission for initial funding, refunding or for a request for supplemental assistance in connection with a Head Start program. These costs may be a part of the direct or the indirect cost pool.

(2) The Head Start grant applicant shall delineate all development and administrative costs in its application.

(3) Indirect costs which are categorized as program costs must be fully explained in the application.

(g) *Waiver.* (1) The responsible HHS official may grant a waiver of the 15 percent limitation on development and administrative costs and approve a higher percentage for a specific period of time not to exceed twelve months. The conditions under which a waiver will be considered are listed below and encompass those situations under which development and administrative costs are being incurred, but the provision of actual services has not begun or has been suspended. A waiver may be granted when:

(i) A new Head Start grantee or delegate agency is being established or services are being expanded by an existing Head Start grantee or delegate agency, and the delivery of component services to children and families is delayed until all program development and planning is well underway or completed; or

(ii) Component services are disrupted in an existing Head Start program due to circumstances not under the control of the grantee.

(2) A Head Start grantee that estimates that the cost of development and administration will exceed 15 percent of total approved costs must submit a request for a waiver that explains the reasons for exceeding the limitation. This must be done as soon as the grantee determines that it cannot comply with the 15 percent limit, regardless of where the grantee is within the grant funding cycle.

(3) The request for the waiver must include the period of time for which the waiver is requested. It must also describe the action the grantee will take to reduce its development and administrative costs so that the grantee will be able to assure that these costs will not exceed 15 percent of the total approved costs of the program after the completion of the waiver period.

(4) If granted, the waiver and the period of time for which it will be granted will be indicated on the Financial Assistance Award.

(5) If a waiver requested as a part of a grant application for funding or refunding is not approved, no Financial Assistance Award will be awarded to the Head Start program until the grantee resubmits a revised budget that complies with the 15 percent limitation.

(Information collection requirements contained in paragraphs (f) (2) and (3) of this section were approved on January 26, 1993, by the Office of Management and Budget under Control Number 0980–1043).

[57 FR 41885, Sept. 14, 1992, as amended at 58 FR 26918, May 6, 1993]

§ 1301.33 Delegation of program operations.

Federal financial assistance is not available for program operations where such operations have been delegated to a delegate agency by a Head Start agency unless the delegation of program operations is made by a written agreement and has been approved by

the responsible HHS official before the delegation is made.

§ 1301.34 Grantee appeals.

An agency receiving a grant under the Act for technical assistance and training, or for a research, demonstration, or pilot project may appeal adverse decisions in accordance with part 16 of this title. Head Start agencies are also subject to the appeal procedures in part 16 except appeals by those agencies for suspension, termination and denial of refunding are subject to part 1303 of this title.

PART 1302—POLICIES AND PROCEDURES FOR SELECTION, INITIAL FUNDING, AND REFUNDING OF HEAD START GRANTEES, AND FOR SELECTION OF REPLACEMENT GRANTEES

Subpart A—General

Subpart B—Basis for Selection of Grantees

Subpart C—Change in Grantee Requiring Amendment of Approved Application or Replacement of Head Start Program

AUTHORITY: 42 U.S.C. 9831 et seq.

SOURCE: 44 FR 24062, Apr. 24, 1979, unless otherwise noted.

Subpart A—General

§ 1302.1 Purpose and scope.

The purpose of this part is to set forth policies and procedures for the selection, initial funding and refunding of Head Start grantees and for the selection of replacement grantees in the event of the voluntary or involuntary termination, or denial of refunding, of Head Start programs. It particularly provides for consideration of the need for selection of a replacement grantee where the continuing eligibility (legal status) and fiscal capability (financial viability) of a grantee to operate a Head Start program is cast in doubt by the cessation of funding under section 519 of the Act or by the occurrence of some other major change. It is intended that Head Start programs be administered effectively and responsibly; that applicants to administer programs receive fair and equitable consideration; and that the legal rights of current Head Start grantees be fully protected.

§ 1302.2 Definitions.

As used in this part—

Act means Title V of The Economic Opportunity Act of 1964, as amended.

Approvable application means an application for a Head Start program, either as an initial application or as an application to amend an approved application governing an on-going Head Start program, which, in addition to showing that the applicant has legal status and financial viability, provides for comprehensive services for children and families and for effective and responsible administration which are in conformity with the Act and applicable regulations, the Head Start Manual and Head Start policies.

Community action agency means a public or private nonprofit agency or organization designated as a community action agency by the Director of the Community Services Administration pursuant to section 210(a) or section 210(d) of the Act.

Community action program means a program operated by a community action agency.

Financial viability means the capability of an applicant or the continuing capability of a grantee to furnish the

non-Federal share of the cost of operating an approvable or approved Head Start program.

Head Start grantee or *grantee* means a public or private nonprofit agency or organization whose application to operate a Head Start program pursuant to section 514 of the Act has been approved by the responsible HHS official.

Legal status means the existence of an applicant or grantee as a public agency or organization under the law of the State in which it is located, or existence as a private nonprofit agency or organization as a legal entity recognized under the law of the State in which it is located. Existence as a private non-profit agency or organization may be established under applicable State or Federal law.

Responsible HHS official means the official of the Department of Health and Human Services who has authority to make grants under the Act.

§ 1302.3 Consultation with public officials and consumers.

Responsible HHS officials will consult with Governors, or their representatives, appropriate local general purpose government officials, and Head Start Policy Council and other appropriate representatives of communities to be served on the proposed replacement of Head Start grantees.

§ 1302.4 Transfer of unexpended balances.

When replacing a grantee, unexpended balances of funds in the possession of such grantee in the fiscal year following the fiscal year for which the funds were appropriated may be transferred to the replacement grantee if the approved application of the replacement grantee provides for the continuation of the Head Start services without significant change to the same enrollees and their parents and undertakes to offer employment to the staff of the terminating grantee. A letter of concurrence in the change should be obtained from the terminating grantee whenever possible.

§ 1302.5 Notice for show cause and hearing.

(a) Except in emergency situations, the responsible HHS official will not suspend financial assistance under the Act unless the grantee has been given an opportunity, in accordance with part 1303, subpart D, of this chapter, to show cause why such action should not be taken.

(b) The responsible HHS official will not terminate a grant, suspend a grant for longer than 30 days, or deny refunding to a grantee, unless the grantee has been given an opportunity for a hearing in accordance with part 1303 of this chapter.

Subpart B—Bases for Selection of Grantees

§ 1302.10 Selection among applicants.

(a) The basis for selection of applicants proposing to operate a Head Start program will be the extent to which the applicants demonstrate in their application the most effective Head Start program.

(b) In addition to the applicable criteria at section 641(d) of the Head Start Act, the criteria for selection will include:

(1) The cost effectiveness of the proposed program;

(2) The qualifications and experience of the applicant and the applicant's staff in planning, organizing and providing comprehensive child development services at the community level, including the administrative and fiscal capability of the applicant to administer all Head Start programs carried out in the designated service area;

(3) The quality of the proposed program as indicated by adherence to or evidence of the intent and capability to adhere to Head Start Performance Standards (in 45 CFR part 1304) and program policies, including the opportunities provided for employment of target area residents and career development for paraprofessional and other staff and provisions made for the direct participation of parents in the planning, conduct and administration of the program;

(4) The proposed program design and option including the suitability of facilities and equipment proposed to be used in carrying out the program, as it relates to community needs and as the applicant proposes to implement the

program in accordance with program policies and regulations; and

(5) The need for Head Start services in the community served by the applicant.

[57 FR 41887, Sept. 14, 1992]

§ 1302.11 Selection among applicants to replace grantee.

The bases for making a selection among applicants which submit approvable applications to replace a grantee, in addition to the basis in § 1302.10 of this part, shall be:

(a) The extent to which provision is made for a continuation of services to the eligible children who have been participating as enrollees in the program;

(b) The extent to which provision is made for continuation of services to the target area or areas served by the program; and

(c) The extent to which provision is made for continued employment by the applicant of the qualified personnel of the existing program.

§ 1302.12 Priority for previously selected Head Start agencies.

Before selecting Head Start agency, the responsible HHS official, in addition to considering the factors specified in §§ 1302.10 and 1302.11, will give priority to an agency which was receiving funds under the Act on January 4, 1975, to operate a Head Start program.

Subpart C—Change in Grantee Requiring Amendment of Approved Application or Replacement of Head Start Program

§ 1302.20 Grantee to show both legal status and financial viability.

(a) Upon the occurrence of a change in the legal condition of a grantee or of a substantial diminution of the financial resources of a grantee, or both, for example, such as might result from cessation of grants to the grantee under section 514 of the Act, the grantee is required within 30 days after the effective date of the regulations in this Part or the date the grantee has notice or knowledge of the change, whichever is later, to show in writing to the satisfaction of the responsible HHS official that it has and will continue to have legal status and financial viability. Failure to make this showing may result in suspension, termination or denial of refunding.

(b) The responsible HHS official will notify the grantee in writing of the decision as to the grantee's legal status and financial viability within 30 days after receiving the grantee's written submittal.

(c) When it is consistent with proper and efficient administration, the responsible HHS official may extend a grantee's program year to end on the date when a change in its legal condition or a substantial diminution of financial resources, or both, is scheduled to take place.

§ 1302.21 Grantee shows legal status but not financial viability.

(a) If a grantee shows legal status but impaired financial viability the responsible HHS official will entertain a timely request for amendment of the grantee's approved application which restores the grantee's financial viability either by a reduction in the program which produces minimum disruption to services and functions, or by an amendment which incorporates essential functions and services not previously funded as part of the total cost of the Head Start program, and, therefore, requires an increase in the amount of the Head Start grant but which will not result in a Federal share of the total cost of the Head Start program in excess of the percentage authorized by the Act or applicable regulations. In considering such a request which includes an increase in the Head Start grant the responsible HHS official will take into account the funds available to him for obligation and whether the proposed increase is consistent with that distribution of Head Start funds which:

(1) Maximizes the number of childen served within his area of responsibility, or in the case of experimental or demonstration programs, the experimental or demonstration benefits to be achieved, and

(2) Maintains approximately the same distribution of Head Start program funds to States as exist during

the fiscal year in which his decision is made.

(b) A request for amendment will be considered to be timely if it is included with the written submittal required by § 1302.20(a) of this part, submitted within 30 days after receiving the notice required by § 1302.20(b) of this part, or submitted as a part of a timely application for refunding.

(c) The grantee will be notified in writing by the responsible HHS official within 30 days after submission of the requested amendment of the decision to approve or disapprove the requested amendment. If the requested amendment is disapproved the notice will contain a statement of the reasons for disapproval.

§ 1302.22 Suspension or termination of grantee which shows financial viability but not legal status.

If a grantee fails to show that it will continue to have legal status after the date of change even though it may show financial viability, the grant shall be suspended or terminated or refunding shall be denied as of the date of change. If it appears reasonable to the responsible HHS official that the deficiency in legal status will be corrected within 30 days he may suspend the grant for not to exceed 30 days after the date of change or the date of submission of a timely request for amendment. If such correction has not been made within the 30 day period the grant shall be terminated.

§ 1302.23 Suspension or termination of grantee which shows legal status but not financial viability.

(a) If the date of change of financial viability precedes or will precede the end of the grantee's program year the grant will be suspended or terminated on that date, or, if a request for amendment has been submitted under § 1302.21 of this part, upon written notice of disapproval of the requested amendment, whichever is later. If it appears reasonable to the responsible HHS official that the deficiency in financial viability will be corrected within 30 days he may suspend the grant for not to exceed 30 days after the date of change or notice of disapproval. If such correction has not been made within the 30 day period the grant will be terminated.

§ 1302.24 Denial of refunding of grantee.

(a) If the date of change will coincide with or will come after the end of the program year and the grantee has notice or knowledge of such change prior to the end of the program year any action taken to approve the grantee's application for refunding for the following program year shall be subject to rescission or ratification depending upon the decision of the responsible HHS official on the grantee's legal status and financial viability and on any requested amendment submitted by the grantee. If the requested amendment is disapproved the responsible HHS official may extend the program year in accordance with § 1302.20(c) of this part.

(b) If the date of change coincides with the end of the program year and the grantee does not have notice or knowledge of the change prior thereto and the grantee's application for refunding for the following program year has been approved, such approval shall be subject to rescission or ratification depending upon the decision of the responsible HHS official on the grantee's legal status and viability and on any requested financial amendment submitted by the grantee.

(c) If the date of change will coincide with or will come after the end of the program year and if the responsible HHS official has prior notice thereof from the grantee or other official source such as the Community Services Administration action to approve any application for refunding submitted by the grantee shall be deferred pending decision by the responsible HHS official on the grantee's legal status and financial viability and any requested amendment submitted by the grantee.

(d) When the responsible HHS official determines to approve a requested amendment for refunding he will approve it for the full term of the proposed program period, if that period as approved is no longer than a program year.

§ 1302.25 Control of funds of grantee scheduled for change.

Responsible HHS officials will place strict controls on the release of grant funds to grantees which are scheduled for change by cessation of their grants under section 519 of the Act. Specifically, the following controls will be established:

(a) Funds will be released on a monthly basis regardless of the form of grant payment.

(b) Funds released each month will be limited to the amount required to cover actual disbursements during that period for activities authorized under the approved Head Start program.

(c) The amount of funds released must be approved each month by the responsible HHS official.

PART 1303—APPEAL PROCEDURES FOR HEAD START GRANTEES AND CURRENT OR PROSPECTIVE DELEGATE AGENCIES

Subpart A—General

Sec.

Subpart B—Appeals by Grantees

Subpart C—Appeals by Current or Prospective Delegate Agencies

AUTHORITY: 42 U.S.C. 9801 *et seq.*

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Subpart A—General

§ 1303.1 Purpose and application.

This part prescribes regulations based on section 646 of the Head Start Act, 42 U.S.C. 9841, as it applies to grantees and current or prospective delegate agencies engaged in or wanting to engage in the operation of Head Start programs under the Act. It prescribes the procedures for appeals by current and prospective delegate agencies from specified actions or inaction by grantees. It also provides procedures for reasonable notice and opportunity to show cause in cases of suspension of financial assistance by the responsible HHS official and for an appeal to the Departmental Appeals Board by grantees in cases of denial of refunding, termination of financial assistance, and suspension of financial assistance.

§ 1303.2 Definitions.

As used in this part:

Act means the Head Start Act, 42 U.S.C. section 9831, *et seq.*

ACYF means the Administration on Children, Youth and Families in the Department of Health and Human Services, and includes Regional staff.

Agreement means either a grant or a contract between a grantee and a delegate agency for the conduct of all or part of the grantee's Head Start program.

Day means the 24 hour period beginning at 12 a.m. local time and continuing for the next 24 hour period. It includes all calendar days unless otherwise expressly noted.

Delegate Agency means a public or private non-profit organization or

agency to which a grantee has delegated by written agreement the carrying out of all or part of its Head Start program.

Denial of Refunding means the refusal of a funding agency to fund an application for a continuation of a Head Start program for a subsequent program year when the decision is based on a determination that the grantee has improperly conducted its program, or is incapable of doing so properly in the future, or otherwise is in violation of applicable law, regulations, or other policies.

Funding Agency means the agency that provides funds directly to either a grantee or a delegate agency. ACYF is the funding agency for a grantee, and a grantee is the funding agency for a delegate agency.

Grantee means the local public or private non-profit agency which has been designated as a Head Start agency under 42 U.S.C. 9836 and which has been granted financial assistance by the responsible HHS official to operate a Head Start program.

Interim Grantee means an agency which has been appointed to operate a Head Start program for a period of time not to exceed one year while an appeal of a denial of refunding, termination or suspension action is pending.

Prospective Delegate Agency means a public or private non-profit agency or organization which has applied to a grantee to serve as a delegate agency.

Responsible HHS Official means the official who is authorized to make the grant of financial assistance to operate a Head Start program or his or her designee.

Submittal means the date of actual receipt or the date the material was served in accordance with §1303.5 of this part for providing documents or notices of appeals, and similar matters, to either grantees, delegate agencies, prospective delegate agencies, or ACYF.

Substantial Rejection means that a funding agency requires that the funding of a current delegate agency be reduced to 80 percent or less of the current level of operations for any reason other than a determination that the delegate agency does not need the funds to serve all the eligible persons it proposes to serve.

Suspension of a grant means temporary withdrawal of the grantee's authority to obligate grant funds pending corrective action by the grantee.

Termination of a grant or delegate agency agreement means permanent withdrawal of the grantee's or delegate agency's authority to obligate previously awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or delegate agency. Termination does not include:

(1) Withdrawal of funds awarded on the basis of the grantee's or delegate agency's underestimate of the unobligated balance in a prior period;

(2) Refusal by the funding agency to extend a grant or award additional funds (such as refusal to make a competing or noncompeting continuation renewal, extension or supplemental award);

(3) Withdrawal of the unobligated balance as of the expiration of a grant;

(4) Annulment, i.e., voiding of a grant upon determination that the award was obtained fraudulently or was otherwise illegal or invalid from its inception.

Work day means any 24 hour period beginning at 12 a.m. local time and continuing for 24 hours. It excludes Saturdays, Sundays, and legal holidays. Any time ending on one of the excluded days shall extend to 5 p.m. of the next full work day.

§1303.3 Right to attorney, attorney fees, and travel costs.

(a) All parties to proceedings under this part, including informal proceedings, have the right to be represented by an attorney.

(1) Attorney fees may be charged to the program grant in an amount equal to the usual and customary fees charged in the locality. However, such fees may not exceed $250.00 per day, adjusted annually to reflect the percentage change in the Consumer Price Index for All Urban Consumers (issued by the Bureau of Labor Statistics) beginning one year after the effective date of these regulations. The grantee or delegate agency may use current operating funds to pay these costs. The

fees of only one attorney may be charged to the program grant with respect to a particular dispute. Such fees may not be charged if the grantee or delegate agency has an attorney on its staff, or if it has a retainer agreement with an attorney which fully covers fees connected with litigation. The grantee or delegate agency shall have the burden of establishing the usual and customary fees and shall furnish documentation to support that determination that is satisfactory to the responsible HHS official.

(2) A grantee or delegate agency may designate up to two persons to attend and participate in proceedings held under this Part. Travel and per diem costs of such persons, and of an attorney representing the grantee or delegate agency, shall not exceed those allowable under Standard Governmental Travel Regulations in effect at the time of the travel.

(b) In the event that use of program funds under this section would result in curtailment of program operations or inability to liquidate prior obligations, the party so affected may apply to the responsible HHS official for payment of these expenses.

(c) The responsible HHS official, upon being satisfied that these expenditures would result in curtailment of program operations or inability to liquidate prior obligations, must make payment therefor to the affected party by way of reimbursement from currently available funds.

§ 1303.4 Remedies.

The procedures established by subparts B and C of this Part shall not be construed as precluding ACYF from pursuing any other remedies authorized by law.

§ 1303.5 Service of process.

Whenever documents are required to be filed or served under this part, or notice provided under this part, certified mail shall be used with a return receipt requested. Alternatively, any other system may be used that provides proof of the date of receipt of the documents by the addressee. If this regulation is not complied with, and if a party alleges that it failed to receive documents allegedly sent to it, there will be a rebuttable presumption that the documents or notices were not sent as required by this part, or as alleged by the party that failed to use the required mode of service. The presumption may be rebutted only by a showing supported by a preponderance of evidence that the material was in fact submitted in a timely manner.

§ 1303.6 Successor agencies and officials.

Wherever reference is made to a particular Federal agency, office, or official it shall be deemed to apply to any other agency, office, or official which subsequently becomes responsible for administration of the program or any portion of it.

§ 1303.7 Effect of failure to file or serve documents in a timely manner.

(a) Whenever an appeal is not filed within the time specified in these or related regulations, the potential appellant shall be deemed to have consented to the proposed action and to have waived all rights of appeal.

(b) Whenever a party has failed to file a response or other submission within the time required in these regulations, or by order of an appropriate HHS responsible official, the party shall be deemed to have waived the right to file such response or submission.

(c) A party fails to comply with the requisite deadlines or time frames if it exceeds them by any amount.

(d) The time to file an appeal, response, or other submission may be waived in accordance with §1303.8 of this part.

§ 1303.8 Waiver of requirements.

(a) Any procedural requirements required by these regulations may be waived by the responsible HHS official or such waiver requests may be granted by the Departmental Appeals Board in those cases where the Board has jurisdiction. Requests for waivers must be in writing and based on good cause.

(b) Approvals of waivers must be in writing and signed by the responsible HHS official or by the Departmental Appeals Board when it has jurisdiction.

(c) ''Good cause'' consists of the following:

(1) Litigation dates cannot be changed;

(2) Personal emergencies pertaining to the health of a person involved in and essential to the proceeding or to a member of that person's immediate family, spouse, parents, or siblings;

(3) The complexity of the case is such that preparation of the necessary documents cannot reasonably be expected to be completed within the standard time frames;

(4) Other matters beyond the control of the party requesting the waiver, such as strikes and natural disasters.

(d) Under no circumstances may ''good cause'' consist of a failure to meet a deadline due to the oversight of either a party or its representative.

(e) Waivers of timely filing or service shall be granted only when necessary in the interest of fairness to all parties, including the Federal agency. They will be granted sparingly as prompt resolution of disputes is a major goal of these regulations. The responsible HHS official or the Departmental Appeals Board shall have the right, on own motion or on motion of a party, to require such documentation as deemed necessary in support of a request for a waiver.

(f) A request for an informal meeting by a delegate agency, including a prospective delegate agency, may be denied by the responsible HHS official, on motion of the grantee or on his or her own motion, if the official concludes that the written appeal fails to state plausible grounds for reversing the grantee's decision or the grantee's failure to act on an application.

(g) The requirements of this section may not be waived.

Subpart B—Appeals by Grantees

§ 1303.10 Purpose.

(a) This subpart establishes rules and procedures for the suspension of a grantee, denial of a grantee's application for refunding, or termination of assistance under the Act for circumstances related to the particular grant, such as ineffective or improper use of Federal funds or for failure to comply with applicable laws, regulations, policies, instructions, assurances, terms and conditions or, in accordance with part 1302 of this chapter, upon loss by the grantee of legal status or financial viability.

(b) This subpart does not apply to any administrative action based upon any violation, or alleged violation, of title VI of the Civil Rights Act of 1964.

§ 1303.11 Suspension on notice and opportunity to show cause.

(a) After receiving concurrence from the Commissioner, ACYF, the responsible HHS official may suspend financial assistance to a grantee in whole or in part for breach or threatened breach of any requirement stated in § 1303.10 pursuant to notice and opportunity to show cause why assistance should not be suspended.

(b) The responsible HHS official will notify the grantee as required by § 1303.5 or by telegram that ACYF intends to suspend financial assistance, in whole or in part, unless good cause is shown why such action should not be taken. The notice will include:

(1) The grounds for the proposed suspension;

(2) The effective date of the proposed suspension;

(3) Information that the grantee has the opportunity to submit written material in opposition to the intended suspension and to meet informally with the responsible HHS official regarding the intended suspension;

(4) Information that the written material must be submitted to the responsible HHS official at least seven days prior to the effective date of the proposed suspension and that a request for an informal meeting must be made in writing to the responsible HHS official no later than seven days after the day the notice of intention to suspend was mailed to the grantee;

(5) Invitation to correct the deficiency by voluntary action; and

(6) A copy of this subpart.

(c) If the grantee requests an informal meeting, the responsible HHS official will fix a time and place for the meeting. In no event will such meeting be scheduled less than seven days after the notice of intention to suspend was sent to the grantee.

(d) The responsible HHS official may at his or her discretion extend the period of time or date for making requests or submitting material by the grantee and will notify the grantee of any such extension.

(e) At the time the responsible HHS official sends the notice of intention to suspend financial assistance to the grantee, the official will send a copy of it to any delegate agency whose activities or failures to act are a substantial cause of the proposed suspension, and will inform such delegate agency that it is entitled to submit written material in opposition and to participate in the informal meeting with the responsible HHS official if one is held. In addition, the responsible HHS official may give such notice to any other Head Start delegate agency of the grantee.

(f) Within three days of receipt of the notice of intention to suspend financial assistance, the grantee shall send a copy of such notice and a copy of this subpart to all delegate agencies which would be financially affected by the proposed suspension action. Any delegate agency that wishes to submit written material may do so within the time stated in the notice. Any delegate agency that wishes to participate in the informal meeting regarding the intended suspension, if not otherwise afforded a right to participate, may request permission to do so from the responsible HHS official, who may grant or deny such permission. In acting upon any such request from a delegate agency, the responsible HHS official will take into account the effect of the proposed suspension on the particular delegate agency, the extent to which the meeting would become unduly complicated as a result of granting such permission, and the extent to which the interests of the delegate agency requesting such permission appear to be adequately represented by other participants.

(g) The responsible HHS official will consider any timely material presented in writing, any material presented during the course of the informal meeting as well as any showing that the grantee has adequately corrected the deficiency which led to the suspension proceedings. The decision of the responsible HHS official will be made within five days after the conclusion of the informal meeting, or, if no informal meeting is held, within five days of receipt by the responsible HHS official of written material from all concerned parties. If the responsible HHS official concludes that the grantee has failed to show cause why financial assistance should not be suspended, the official may suspend financial assistance in whole or in part and under such terms and conditions as he or she specifies.

(h) Notice of such suspension will be promptly transmitted to the grantee as required in § 1303.5 of this part or by some other means showing the date of receipt, and shall become effective upon delivery or on the date delivery is refused or the material is returned. Suspension shall not exceed 30 days unless the responsible HHS official and the grantee agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated in accordance with § 1303.14, the suspension of financial assistance will be rescinded.

(i) New obligations incurred by the grantee during the suspension period will be not be allowed unless the granting agency expressly authorizes them in the notice of suspension or an amendment to it. Necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension period will be allowed if they result from obligations properly incurred by the grantee before the effective date of the suspension and not in anticipation of suspension or termination. At the discretion of the granting agency, third-party in-kind contributions applicable to the suspension period may be allowed in satisfaction of cost sharing or matching requirements.

(j) The responsible HHS official may appoint an agency to serve as an interim grantee to operate the program until the grantee's suspension is lifted.

(k) The responsible HHS official may modify the terms, conditions and nature of the suspension or rescind the suspension action at any time on his or her own initiative or upon a satisfactory showing that the grantee has adequately corrected the deficiency which

led to the suspension and that repetition is not threatened. Suspension partly or fully rescinded may, at the discretion of the responsible HHS official, be reimposed with or without further proceedings, except that the total time of suspension may not exceed 30 days unless termination proceedings are initiated in accordance with § 1303.14 or unless the responsible HHS official and the grantee agree to continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension of financial assistance will be rescinded.

§ 1303.12 Summary suspension and opportunity to show cause.

(a) After receiving concurrence from the Commissioner, ACYF, the responsible HHS official may suspend financial assistance in whole or in part without prior notice and an opportunity to show cause if it is determined that immediate suspension is necessary because of a serious risk of:

(1) Substantial injury to property or loss of project funds; or

(2) Violation of a Federal, State, or local criminal statute; or

(3) If staff or participants' health and safety are at risk.

(b) The notice of summary suspension will be given to the grantee as required by § 1303.5 of this part, or by some other means showing the date of receipt, and shall become effective on delivery or on the date delivery is refused or the material is returned unclaimed.

(c) The notice must include the following items:

(1) The effective date of the suspension;

(2) The grounds for the suspension;

(3) The extent of the terms and conditions of any full or partial suspension;

(4) A statement prohibiting the grantee from making any new expenditures or incurring any new obligations in connection with the suspended portion of the program; and

(5) A statement advising the grantee that it has an opportunity to show cause at an informal meeting why the suspension should be rescinded. The request for an informal meeting must be made by the grantee in writing to the responsible HHS official no later than five workdays after the effective date of the notice of summary suspension as described in paragraph (b) of this section.

(d) If the grantee requests in writing the opportunity to show cause why the suspension should be rescinded, the responsible HHS official will fix a time and place for an informal meeting for this purpose. This meeting will be held within five workdays after the grantee's request is received by the responsible HHS official. Notwithstanding the provisions of this paragraph, the responsible HHS official may proceed to deny refunding or initiate termination proceedings at any time even though financial assistance of the grantee has been suspended in whole or in part.

(e) Notice of summary suspension must also be furnished by the grantee to its delegate agencies within two workdays of its receipt of the notice from ACYF by certified mail, return receipt requested, or by any other means showing dates of transmittal and receipt or return as undeliverable or unclaimed. Delegate agencies affected by the summary suspension have the right to participate in the informal meeting as set forth in paragraph (d) of this section.

(f) The effective period of a summary suspension of financial assistance may not exceed 30 days unless:

(1) The conditions creating the summary suspension have not been corrected; or

(2) The parties agree to a continuation of the summary suspension for an additional period of time; or

(3) The grantee, in accordance with paragraph (d) of this section, requests an opportunity to show cause why the summary suspension should be rescinded, in which case it may remain in effect in accordance with paragraph (h) of this section; or

(4) Termination or denial of refunding proceedings are initiated in accordance with § 1303.14 or § 1303.15.

(g) Any summary suspension that remains in effect for more than 30 days is subject to the requirements of § 1303.13 of this part. The only exceptions are where there is an agreement under paragraph (f)(2) of this section, or the

circumstances described in paragraph (f)(4) or (h)(1) of this section exist.

(h)(1) If the grantee requests an opportunity to show cause why a summary suspension should be rescinded, the suspension of financial assistance will continue in effect until the grantee has been afforded such opportunity and a decision has been made by the responsible HHS official.

(2) If the suspension continues for more than 30 days, the suspension remains in effect even if it is appealed to the Departmental Appeals Board.

(3) Notwithstanding any other provisions of these or other regulations, if a denial of refunding occurs or a termination action is instituted while the summary suspension is in effect, the suspension shall merge into the later action and funding shall not be available until the action is rescinded or a decision favorable to the grantee is rendered.

(i) The responsible HHS official must consider any timely material presented in writing, any material presented during the course of the informal meeting, as well as any other evidence that the grantee has adequately corrected the deficiency which led to the summary suspension.

(j) A decision must be made within five work days after the conclusion of the informal meeting with the responsible HHS official. If the responsible HHS official concludes, after considering the information provided at the informal meeting, that the grantee has failed to show cause why the suspension should be rescinded, the responsible HHS official may continue the suspension, in whole or in part and under the terms and conditions specified in the notice of suspension.

(k) New obligations incurred by the grantee during the suspension period will not be allowed unless the granting agency expressly authorizes them in the notice of suspension or by an amendment to the notice. Necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension period will be allowed if they result from obligations properly incurred by the grantee before the effective date of the suspension and not in anticipation of suspension, denial of refunding or termination.

(l) The responsible HHS official may appoint an agency to serve as an interim grantee to operate the program until either the grantee's summary suspension is lifted or a new grantee is selected in accordance with subpart B of this part.

(m) At the discretion of the funding agency, third-party in-kind contributions applicable to the suspension period may be allowed in satisfaction of cost sharing or matching requirements.

(n) The responsible HHS official may modify the terms, conditions and nature of the summary suspension or rescind the suspension action at any time upon receiving satisfactory evidence that the grantee has adequately corrected the deficiency which led to the suspension and that the deficiency will not occur again. Suspension partly or fully rescinded may, at the discretion of the responsible HHS official, be reimposed with or without further proceedings.

§ 1303.13 Appeal by a grantee of a suspension continuing for more than 30 days.

(a) This section applies to summary suspensions that are initially issued for more than 30 days and summary suspensions continued for more than 30 days except those identified in paragraph § 1303.12(g) of this part.

(b) After receiving concurrence from the Commissioner, ACYF, the responsible HHS official may suspend a grant for more than 30 days. A suspension may, among other bases, be imposed for the same reasons that justify termination of financial assistance or which justify a denial of refunding of a grant.

(c) A notice of a suspension under this section shall set forth:

(1) The reasons for the action;

(2) The duration of the suspension, which may be indefinite;

(3) The fact that the action may be appealed to the Departmental Appeals Board and the time within which it must be appealed.

(d) During the period of suspension a grantee may not incur any valid obligations against Federal Head Start grant funds, nor may any grantee expenditure or provision of in-kind services or items of value made during the

period be counted as applying toward any required matching contribution required of a grantee, except as otherwise provided in this part.

(e) The responsible HHS official may appoint an agency to serve as an interim grantee to operate the program until either the grantee's suspension is lifted or a new grantee is selected in accordance with subparts B and C of 45 CFR part 1302.

(f) Any appeal to the Departmental Appeals Board must be made within five days of the grantee's receipt of notice of suspension or return of the notice as undeliverable, refused, or unclaimed. Such an appeal must be in writing and it must fully set forth the grounds for the appeal and be accompanied by all documentation that the grantee believes is relevant and supportive of its position.

All such appeals shall be addressed to the Departmental Appeals Board, and the appellant will send a copy of the appeal to the Commissioner, ACYF, and the responsible HHS official. Appeals will be governed by the Departmental Appeals Board's regulations at 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations. Any grantee requesting a hearing as part of its appeal shall be afforded one by the Departmental Appeals Board.

(g) If a grantee is successful on its appeal any costs incurred during the period of suspension that are otherwise allowable may be paid with Federal grant funds. Moreover, any cash or in-kind contributions of the grantee during the suspension period that are otherwise allowable may be counted toward meeting the grantee's non-Federal share requirement.

(h) If a grantee's appeal is denied by the Departmental Appeals Board, but the grantee is subsequently restored to the program because it has corrected those conditions which warranted the suspension, its activities during the period of the suspension remain outside the scope of the program.

Federal funds may not be used to offset any costs during the period, nor may any cash or in-kind contributions received during the period be used to meet non-Federal share requirements.

(i) If the Federal agency institutes termination proceedings during a suspension, or denies refunding, the two actions shall merge and the grantee need not file a new appeal. Rather, the Departmental Appeals Board will be notified by the Federal agency and will automatically be vested with jurisdiction over the termination action or the denial of refunding and will, pursuant to its rules and procedures, permit the grantee to respond to the notice of termination. In a situation where a suspension action is merged into a termination action in accordance with this section, the suspension continues until there is an administrative decision by the Departmental Appeals Board on the grantee's appeal.

§ 1303.14 Appeal by a grantee from a termination of financial assistance.

(a) After receiving concurrence from the Commissioner, ACYF, the responsible HHS official may terminate financial assistance to a grantee. Financial assistance may be terminated in whole or in part.

(b) Financial assistance may be terminated for any or all of the following reasons:

(1) The grantee is no longer financially viable;

(2) The grantee has lost the requisite legal status or permits;

(3) The grantee has failed to comply with the required fiscal or program reporting requirements applicable to grantees in the Head Start program;

(4) The grantee has failed to meet the performance standards for operation of Head Start programs that are applicable to grantees;

(5) The grantee has failed to comply with the eligibility requirements and limitations on enrollment in the Head Start program, or both;

(6) The grantee has failed to comply with the Head Start grants administration requirements set forth in 45 CFR part 1301;

(7) The grantee has failed to comply with the requirements of the Head Start Act;

(8) The grantee is debarred from receiving Federal grants or contracts;

(9) The grantee fails to abide by any other terms and conditions of its award

of financial assistance, or any other applicable laws, regulations, or other applicable Federal or State requirements or policies.

(c) A notice of termination shall set forth:

(1) The violations or actions justifying the termination.

(2) The fact that the termination may be appealed within 10 days to the Departmental Appeals Board (with a copy of the appeal sent to the responsible HHS official and the Commissioner, ACYF) and that such appeals shall be governed by 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations, and that any grantee which requests a hearing shall be afforded one, as mandated by 42 U.S.C. 9841. Such an appeal must be in writing and must fully set forth the grounds for the appeal and be accompanied by all of the documentation that the grantee believes is relevant and supportive of its position.

(3) That the appeal may be made only by the Board of Directors of the grantee or an official acting on behalf of such Board.

(4) That, if the activities of a delegate agency are the basis, in whole or in part, for the proposed termination, the identity of the delegate agency.

(5) Information that the grantee has a right to request a hearing in writing within a period of time specified in the notice which is not later than 10 days from the date of sending the notice.

(d) (1) During a grantee's appeal of a termination decision, funding will continue until an adverse decision is rendered or until expiration of the then current budget period. At the end of the current budget period, if a decision has not been rendered, the responsible HHS official shall award an interim grant to the grantee until a decision is made.

(2) If a grantee's funding has been suspended, no funding shall be available during the termination proceedings, or at any other time, unless the action is rescinded or the grantee's appeal is successful. An interim grantee will be appointed during the appeal period.

(3) If a grantee does not appeal an administrative decision to court within 30 days of its receipt of the decision, a replacement grantee will be immediately sought. An interim grantee may be named, if needed, pending the selection of a replacement grantee.

(4) An interim grantee may be sought even though the grantee has appealed an administrative decision to court within 30 days, if the responsible HHS official determines it necessary to do so. Examples of circumstances that warrant an interim grantee are to protect children and families from harm and Federal funds from misuse or dissipation or both.

(e) If a grantee requests a hearing, it shall send a copy of its request to all delegate agencies which would be financially affected by the termination of assistance and to each delegate agency identified in the notice. The copies of the request shall be sent to these delegate agencies at the same time the grantee's request is made of ACYF. The grantee shall promptly send ACYF a list of the delegate agencies to which it has sent the copies and the date on which they were sent.

(f) If the Departmental Appeals Board informs a grantee that a proposed termination action has been set down for hearing, the grantee shall, within five days of its receipt of this notice, send a copy of it to all delegate agencies which would be financially affected by the termination and to each delegate agency identified in the notice. The grantee shall send the Departmental Appeals Board and the responsible HHS official a list of all delegate agencies notified and the dates of notification.

(g) If the responsible HHS official has initiated termination proceedings because of the activities of a delegate agency, that delegate agency may participate in the hearing as a matter of right. Any other delegate agency, person, agency or organization that wishes to participate in the hearing may request permission to do so from the presiding officer of the hearing. Such participation shall not, without the consent of ACYF and the grantee, alter the time limitations for the delivery of papers or other procedures set forth in this section.

(h) The results of the proceeding and any measure taken thereafter by ACYF pursuant to this part shall be fully

binding upon the grantee and all its delegate agencies, whether or not they actually participated in the hearing.

(i) A grantee may waive a hearing and submit written information and argument for the record. Such material shall be submitted within a reasonable period of time to be fixed by the Departmental Appeals Board upon the request of the grantee. The failure of a grantee to request a hearing, or to appear at a hearing for which a date had been set, unless excused for good cause, shall be deemed a waiver of the right to a hearing and consent to the making of a decision on the basis of written information and argument submitted by the parties to the Departmental Appeals Board.

(j) The responsible HHS official may attempt, either personally or through a representative, to resolve the issues in dispute by informal means prior to the hearing.

§ 1303.15 Appeal by a grantee from a denial of refunding.

(a) After receiving concurrence from the Commissioner, ACYF, a grantee's application for refunding may be denied by the responsible HHS official for circumstances described in paragraph (c) of this section.

(b) When an intention to deny a grantee's application for refunding is arrived at on a basis to which this subpart applies, the responsible HHS official will provide the grantee as much advance notice thereof as is reasonably possible, in no event later than 30 days after the receipt by ACYF of the application. The notice will inform the grantee that it has the opportunity for a full and fair hearing on whether refunding should be denied.

(1) Such appeals shall be governed by 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations. Any grantee which requests a hearing shall be afforded one, as mandated by 42 U.S.C. 9841.

(2) Any such appeals must be filed within ten work days after the grantee receives notice of the decision to deny refunding.

(c) Refunding of a grant may be denied for any or all of the reasons for which a grant may be terminated, as set forth in § 1303.14(b) of this part.

(d) Decisions to deny refunding shall be in writing, signed by the responsible HHS official, dated, and sent in compliance with § 1303.5 of this part or by telegram, or by any other mode establishing the date sent and received by the addressee, or the date it was determined delivery could not be made, or the date delivery was refused. A Notice of Decision shall contain:

(1) A statement that indicates the grounds which justify the proposed denial of refunding;

(2) The identity of the delegate agency, if the activities of that delegate agency are the basis, in whole or in part, for the proposed denial of refunding; and

(3) A statement that, if the grantee wishes to appeal the denial of refunding of financial assistance, it must appeal directly to the Departmental Appeals Board, and send a copy of the appeal to the responsible HHS official and the Commissioner, ACYF. Such an appeal must be in writing and it must fully set forth the grounds for the appeal and be accompanied by all documentation that the grantee believes is relevant and supportive of its position. Appeals will be governed by the Departmental Appeals Board's regulations at 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations.

(e) The appeal may be made only by the Board of Directors of the grantee or by an official acting on behalf of such Board.

§ 1303.16 Conduct of hearing.

(a) The presiding officer shall conduct a full and fair hearing, avoid delay, maintain order, and make a sufficient record of the facts and issues. To accomplish these ends, the presiding officer shall have all powers authorized by law, and may make all procedural and evidentiary rulings necessary for the conduct of the hearing. The hearing shall be open to the public unless the presiding officer for good cause shown otherwise determines.

(b) Communications outside the record are prohibited as provided by 45 CFR 16.17.

(c) Both ACYF and the grantee are entitled to present their case by oral or

documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination as may be required for a full and true disclosure of all facts bearing on the issues. The issues shall be those stated in the notice required to be filed by paragraph (g) of this section, those stipulated in a prehearing conference or those agreed to by the parties.

(d) In addition to ACYF, the grantee, and any delegate agencies which have a right to appear, the presiding officer may permit the participation in the proceedings of such persons or organizations as deemed necessary for a proper determination of the issues involved. Such participation may be limited to those issues or activities which the presiding officer believes will meet the needs of the proceeding, and may be limited to the filing of written material.

(e) Any person or organization that wishes to participate in a proceeding may apply for permission to do so from the presiding officer. This application, which shall be made as soon as possible after the notice of termination, denial of refunding or suspension has been received by the grantee, shall state the applicant's interest in the proceeding, the evidence or arguments the applicant intends to contribute, and the necessity for the introduction of such evidence or arguments.

(f) The presiding officer shall permit or deny such participation and shall give notice of his or her decision to the applicant, the grantee, and ACYF, and, in the case of denial, a brief statement of the reasons therefor. Even if previously denied, the presiding officer may subsequently permit such participation if, in his or her opinion, it is warranted by subsequent circumstances. If participation is granted, the presiding officer shall notify all parties of that fact and may, in appropriate cases, include in the notification a brief statement of the issues as to which participation is permitted.

(g) The Departmental Appeals Board will send the responsible HHS official, the grantee and any other party a notice which states the time, place, nature of the hearing, and the legal authority and jurisdiction under which the hearing is to be held. The notice will also identify with reasonable specificity and ACYF requirements which the grantee is alleged to have violated. The notice will be served and filed not later than ten work days prior to the hearing.

Subpart C—Appeals by Current or Prospective Delegate Agencies

§ 1303.20 Appeals to grantees by current or prospective delegate agencies of rejection of an application, failure to act on an application or termination of a grant or contract.

(a) A grantee must give prompt, fair and adequate consideration to applications submitted by current or prospective delegate agencies to operate Head Start programs. The failure of the grantee to act within 30 days after receiving the application is deemed to be a rejection of the application.

(b) A grantee must notify an applicant in writing within 30 days after receiving the application of its decision to either accept or to wholly or substantially reject it. If the decision is to wholly or substantially reject the application, the notice shall contain a statement of the reasons for the decision and a statement that the applicant has a right to appeal the decision within ten work days after receipt of the notice. If a grantee fails to act on the application by the end of the 30 day period which grantees have to review applications, the current or prospective delegate agency may appeal to the grantee, in writing, within 15 work days of the end of the 30 day grantee review period.

(c) A grantee must notify a delegate agency in writing of its decision to terminate its agreement with the delegate agency, explaining the reasons for its decision and that the delegate agency has the right to appeal the decision to the grantee within ten work days after receipt of the notice.

(d) The grantee has 20 days to review the written appeal and issue its decision. If the grantee sustains its earlier termination of an award or its rejection of an application, the current or prospective delegate agency then may appeal, in writing, to the responsible HHS official. The appeal must be submitted to the responsible HHS official

within ten work days after the receipt of the grantee's final decision. The appeal must fully set forth the grounds for the appeal.

(e) A grantee may not reject the application or terminate the operations of a delegate agency on the basis of defects or deficiencies in the application or in the operation of the program without first:

(1) Notifying the delegate agency of the defects and deficiencies;

(2) Providing, or providing for, technical assistance so that defects and deficiencies can be corrected by the delegate agency; and

(3) Giving the delegate agency the opportunity to make appropriate corrections.

(f) An appeal filed pursuant to a grantee failing to act on a current or prospective delegate agency's application within a 30 day period need only contain a copy of the application, the date filed, and any proof of the date the grantee received the application. The grantee shall have five days in which to respond to the appeal.

(g) Failure to appeal to the grantee regarding its decision to reject an application, terminate an agreement, or failure to act on an application shall bar any appeal to the responsible HHS official.

§ 1303.21 Procedures for appeal by current or prospective delegate agencies to the responsible HHS official from denials by grantees of an application or failure to act on an application.

(a) Any current or prospective delegate agency that is dissatisfied with the decision of a grantee rendered under § 1303.20 may appeal to the responsible HHS official whose decision is final and not appealable to the Commissioner, ACYF. Such an appeal must be in writing and it must fully set forth the grounds for the appeal and be accompanied by all documentation that the current or prospective delegate agency believes is relevant and supportive of this position, including all written material or documentation submitted to the grantee under the procedures set forth in § 1303.20, as well as a copy of any decision rendered by the grantee. A copy of the appeal and all material filed with the responsible HHS official must be simultaneously served on the grantee.

(b) In providing the information required by paragraph (a) of this section, delegate agencies must set forth:

(1) Whether, when and how the grantee advised the delegate agency of alleged defects and deficiencies in the delegate agency's application or in the operation of its program prior to the grantee's rejection or termination notice;

(2) Whether the grantee provided the delegate agency reasonable opportunity to correct the defects and deficiencies, the details of the opportunity that was given and whether or not the grantee provided or provided for technical advice, consultation, or assistance to the current delegate agency concerning the correction of the defects and deficiencies;

(3) What steps or measures, if any, were undertaken by the delegate agency to correct any defects or deficiencies;

(4) When and how the grantee notified the delegate agency of its decision;

(5) Whether the grantee told the delegate agency the reasons for its decision and, if so, how such reasons were communicated to the delegate agency and what they were;

(6) If it is the delegate agency's position that the grantee acted arbitrarily or capriciously, the reasons why the delegate agency takes this position; and

(7) Any other facts and circumstances which the delegate agency believes supports its appeal.

(c) The grantee may submit a written response to the appeal of a prospective delegate agency. It may also submit additional information which it believes is relevant and supportive of its position.

(d) In the case of an appeal by a delegate agency, the grantee must submit a written statement to the responsible HHS official responding to the items specified in paragraph (b) of this section. The grantee must include information that explains why it acted properly in arriving at its decision or in failing to act, and any other facts and circumstances which the grantee believes supports its position.

(e)(1) The responsible HHS official may meet informally with the current or prospective delegate agency if such official determines that such a meeting would be beneficial to the proper resolution of the appeal. Such meetings may be conducted by conference call.

(2) An informal meeting must be requested by the current or prospective delegate agency at the time of the appeal. In addition, the grantee may request an informal meeting with the responsible HHS official. If none of the parties requests an informal meeting, the responsible HHS official may hold such a meeting if he or she believes it would be beneficial for a proper resolution of the dispute. Both the grantee and the current or prospective delegate agency may attend any informal meeting concerning the appeal. If a party wishes to oppose a request for a meeting it must serve its opposition on the responsible HHS official and any other party within five work days of its receipt of the request.

(f) A grantee's response to appeals by current or prospective delegate agencies must be submitted to the responsible HHS official within ten work days of receipt of the materials served on it by the current or prospective delegate agency in accordance with paragraph (a) of this section. The grantee must serve a copy of its response on the current or prospective delegate agency.

(g) The responsible HHS official shall notify the current or prospective delegate agency and the grantee whether or not an informal meeting will be held. If an informal meeting is held, it must be held within ten work days after the notice by the responsible HHS official is mailed. The responsible HHS official must designate either the Regional Office or the place where the current or prospective delegate agency or grantee is located for holding the informal meeting.

(h) If an informal meeting is not held, each party shall have an opportunity to reply in writing to the written statement submitted by the other party. The written reply must be submitted to the responsible HHS official within five work days after the notification required by paragraph (g) of this section. If a meeting is not to be held, notice of that fact shall be served on the parties within five work days of the receipt of a timely response to such a request or the expiration of the time for submitting a response to such a request.

(i) In deciding an appeal under this section, the responsible HHS official will arrive at his or her decision by considering:

(1) The material submitted in writing and the information presented at any informal meeting;

(2) The application of the current or prospective delegate agency;

(3) His or her knowledge of the grantee's program as well as any evaluations of his or her staff about the grantee's program and current or prospective delegate agency's application and prior performance; and

(4) Any other evidence deemed relevant by the responsible HHS official.

§ 1303.22 Decision on appeal in favor of grantee.

(a) If the responsible HHS official finds in favor of the grantee, the appeal will be dismissed unless there is cause to remand the matter back to the grantee.

(b) The grantee's decision will be sustained unless it is determined by the responsible HHS official that the grantee acted arbitrarily, capriciously, or otherwise contrary to law, regulation, or other applicable requirements.

(c) The decision will be made within ten workdays after the informal meeting. The decision, including a statement of the reasons therefor, will be in writing, and will be served on the parties within five workdays from the date of the decision by the responsible HHS official.

(d) If the decision is made on the basis of written materials only, the decision will be made within five workdays of the receipt of the materials. The decision will be served on the parties no more than five days after it is made.

§ 1303.23 Decision on appeal in favor of the current or prospective delegate agency.

(a) The responsible HHS official will remand the rejection of an application or termination of an agreement to the grantee for prompt reconsideration and

decision if the responsible HHS official's decision does not sustain the grantee's decision, and if there are issues which require further development before a final decision can be made. The grantee's reconsideration and decision must be made in accordance with all applicable requirements of this part as well as other relevant regulations, statutory provisions, and program issuances. The grantee must issue its decision on remand in writing to both the current or prospective delegate agency and the responsible HHS official within 15 workdays after the date of receipt of the remand.

(b) If the current or prospective delegate agency is dissatisfied with the grantee's decision on remand, it may appeal to the responsible HHS official within five workdays of its receipt of that decision. Any such appeal must comply with the requirements of §1303.21 of this part.

(c) If the responsible HHS official finds that the grantee's decision on remand is incorrect or if the grantee fails to issue its decision within 15 work days, the responsible HHS official will entertain an application by the current or prospective delegate agency for a direct grant.

(1) If such an application is approved, there will be a commensurate reduction in the level of funding of the grantee and whatever other action is deemed appropriate in the circumstances. Such reduction in funding shall not be considered a termination or denial of refunding and may not be appealed under this part.

(2) If such an application is not approved, the responsible HHS official will take whatever action he or she deems appropriate under the circumstances.

(d) If, without fault on the part of a delegate agency, its operating funds are exhausted before its appeal has been decided, the grantee will furnish sufficient funds for the maintenance of the delegate agency's current level of operations until a final administrative decision has been reached.

(e) If the responsible HHS official sustains the decision of the grantee following remand, he or she shall notify the parties of the fact within 15 work days of the receipt of final submittal of documents, or of the conclusion of any meeting between the official and the parties, whichever is later.

§1303.24 OMB control number.

The collection of information requirements in sections 1303.10 through 1303.23 of this part were approved on January 22, 1993, by the Office of Management and Budget and assigned OMB control number 0980–0242.

[58 FR 13019, Mar. 9, 1993]

PART 1304—PROGRAM PERFORMANCE STANDARDS FOR OPERATION OF HEAD START PROGRAMS BY GRANTEES AND DELEGATE AGENCIES

Subpart A—General

Subpart B—Education Services Objectives and Performance Standards

Subpart C—Health Services Objectives and Performance Standards

Subpart D—Social Services Objectives and Performance Standards

Subpart E—Parent Involvement Objectives and Performance Standards

AUTHORITY: 42 U.S.C. 9801 *et seq.*

SOURCE: 40 FR 27562, June 30, 1975, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to Part 1304 appear at 58 FR 5518, Jan. 21, 1993.

Subpart A—General

§ 1304.1–1 Purpose and application.

This part sets out the goals of the Head Start program as they may be achieved by the combined attainment of the objectives of the basic components of the program, with emphasis on the program performance standards necessary and required to attain those objectives. With the required development of plans covering the implementation of the performance standards, grantees and delegate agencies will have firm bases for operations most likely to lead to demonstrable benefits to children and their families. While compliance with the performance standards is required as a condition of Federal Head Start funding, it is expected that the standards will be largely self-enforcing. This part applies to all Head Start grantees and delegate agencies.

§ 1304.1–2 Definitions.

As used in this part:

(a) The term *ACYF* means the Administration on Children, Youth and Families, Administration for Children and Families, U.S. Department of Health and Human Services, and includes appropriate Regional Office staff.

(b) The term *responsible HHS official* means the official who is authorized to make the grant of assistance in question, or his designee.

(c) The term *Commissioner* means the Commissioner of the Administration on Children, Youth and Families.

(d) The term *grantee* means the public or private non-profit agency which has been granted assistance by ACYF to carry on a Head Start program.

(e) The term *delegate agency* means a public or private nonprofit organization or agency to which a grantee has delegated the carrying on of all or part of its Head Start program.

(f) The term *goal* means the ultimate purpose or interest toward which total Head Start program efforts are directed.

(g) The term *objective* means the ultimate purpose or interest toward which Head Start program component efforts are directed.

(h) The term *program performance standards* or *performance standards* means the Head Start program functions, activities and facilities required and necessary to meet the objectives and goals of the Head Start program as they relate directly to children and their families.

(i) The term ''children with disabilities'' means children with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities who, by reason thereof need special education and related services. The term ''children with disabilities'' for children aged 3 to 5, inclusive, may, at a State's discretion, include children experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, need special education and related services.

[40 FR 27562, June 30, 1975, as amended at 58 FR 5518, Jan. 21, 1993]

§ 1304.1–3 Head Start Program goals.

(a) The Head Start Program is based on the premise that all children share

certain needs, and that children of low income families, in particular, can benefit from a comprehensive developmental program to meet those needs. The Head Start program approach is based on the philosophy that:

(1) A child can benefit most from a comprehensive, interdisciplinary program to foster development and remedy problems as expressed in a broad range of services, and that

(2) The child's entire family, as well as the community must be involved. The program should maximize the strengths and unique experiences of each child. The family, which is perceived as the principal influence on the child's development, must be a direct participant in the program. Local communities are allowed latitude in developing creative program designs so long as the basic goals, objectives and standards of a comprehensive program are adhered to.

(b) The overall goal of the Head Start program is to bring about a greater degree of social competence in children of low income families. By social competence is meant the child's everyday effectiveness in dealing with both present environment and later responsibilities in school and life. Social competence takes into account the interrelatedness of cognitive and intellectual development, physical and mental health, nutritional needs, and other factors that enable a child to function optimally. The Head Start program is a comprehensive developmental approach to helping children achieve social competence. To the accomplishment of this goal, Head Start objectives and performance standards provide for:

(1) The improvement of the child's health and physical abilities, including appropriate steps to correct present physical and mental problems and to enhance every child's access to an adequate diet. The improvement of the family's attitude toward future health care and physical abilities.

(2) The encouragement of self-confidence, spontaneity, curiosity, and self-discipline which will assist in the development of the child's social and emotional health.

(3) The enhancement of the child's mental processes and skills with particular attention to conceptual and communications skills.

(4) The establishment of patterns and expectations of success for the child, which will create a climate of confidence for present and future learning efforts and overall development.

(5) An increase in the ability of the child and the family to relate to each other and to others.

(6) The enhancement of the sense of dignity and self-worth within the child and his family.

§ 1304.1–4 Performance standards plan development.

Each grantee and delegate agency shall develop a plan for implementing the performance standards prescribed in Subparts B, C, D, and E of this part for use in the operation of its Head Start program (hereinafter called ''plan,'' or ''performance standards plan''). The plan shall provide that the Head Start program covered thereby shall meet or exceed the performance standards. The plan shall be in writing and shall be developed by the appropriate professional Head Start staff of the grantee or delegate agency with cooperation from other Head Start staff, with technical assistance and advice as needed from personnel of the Regional Office and professional consultants, and with the advice and concurrence of the policy council or policy committee. The plan must be reviewed by grantee or delegate agency staff and the policy council or policy committee at least annually and revised and updated as may be necessary.

§ 1304.1–5 Performance standards implementation and enforcement.

(a) Grantees and delegate agencies must be in compliance with or exceed the performance standards prescribed in subparts B, C, D, and E, of this part at the commencement of the grantee's program year next following July 1, 1975, effective date of the regulations in this part, or 6 months after that date, whichever is later, and thereafter, unless the period for full compliance is extended in accordance with paragraph (f) of this section.

(b) If the responsible HHS official as a result of information obtained from program self-evaluation, pre-review, or

routine monitoring, is aware or has reason to believe that a Head Start program, with respect to performance standards other than those for which the time for compliance has been extended in accordance with paragraph (f) of this section, is not in compliance with performance standards, he shall notify the grantee promptly in writing of the deficiencies and inform the grantee that it, or if the deficiencies are in a Head Start program operated by a delegate agency, the delegate agency, has a period stated in the notice not to exceed 90 days to come into compliance. If the notice is with respect to a delegate agency, the grantee shall immediately notify the delegate agency and inform it of the time within which the deficiencies must be corrected. Upon receiving the notice the grantee or delegate agency shall immediately analyze its operations to determine how it might best comply with the performance standards. In this process it shall review, among other things, its utilization of all available local resources, and whether it is receiving the benefits of State and other Federal programs for which it is eligible and which are available. It shall review and realign where feasible program priorities, operations, and financial and manpower allocations. It shall also consider the possibility of choosing an alternate program option for the delivery of Head Start Services in accordance with ACYF Notice N–30–334–1, Program Options for Project Head Start, attached hereto as Appendix A, which the grantee, with ACYF concurrence, determines that it would be able to operate as a quality program in compliance with performance standards.

(c) The grantee or delegate agency shall report in writing in detail its efforts to meet the performance standards within the time given in the notice to the responsible HHS official. A delegate agency shall report through the grantee. If the reporting agency, grantee or delegate agency, determines that it is unable to comply with the performance standards, the responsible HHS official shall be notified promptly in writing by the grantee, which notice shall contain a description of the deficiencies not able to be corrected and the reasons therefor. If insufficient funding is included as a principal reason for inability to comply with performance standards, the notice shall specify the exact amount, and basis for, the funding deficit and efforts made to obtain funding from other sources.

(d) The responsible HHS official on the basis of the reports submitted pursuant to paragraph (c) of this section, will undertake to assist grantees, and delegate agencies through their grantees, to comply with the performance standards, including by furnishing or by recommending technical assistance.

(e) If the grantee or delegate agency has not complied with the performance standards, other than those for which the time for compliance has been extended in accordance with paragraph (f) of this section, within the period stated in the notice issued under paragraph (b) of this section, the grantee shall be notified promptly by the responsible HHS official of the commencement of suspension or termination proceedings or of the intention to deny refunding, as may be appropriate, under part 1303 (appeals procedures) of this chapter.

(f) The time within which a grantee or delegate agency shall be required to correct deficiencies in implementation of the performance standards may be extended by the responsible HHS official to a maximum of one year, only with respect to the following deficiencies:

(1) The space per child provided by the Head Start program does not comply with the Education Services performance standard but there is no risk to the health or safety of the children;

(2) The Head Start program is unable to provide Medical or Dental Treatment Services as required by Health Services Performance Standards because funding is insufficient and there are no community or other resources available;

(3) The services of a mental health professional is not available or accessible to the program as required by the Health Services Performance Standards; or

(4) The deficient service is not able to be corrected within the 90 days notice period, notwithstanding full effort at

compliance, because of lack of funds and outside community resources, but it is reasonable to expect that the services will be brought into compliance within the extended period, and, the overall high quality of the Head Start program otherwise will be maintained during the extension.

Subpart B—Education Services Objectives and Performance Standards

§ 1304.2–1 Education services objectives.

The objectives of the Education Service component of the Head Start program are to:

(a) Provide children with a learning environment and the varied experiences which will help them develop socially, intellectually, physically, and emotionally in a manner appropriate to their age and stage of development toward the overall goal of social competence.

(b) Integrate the educational aspects of the various Head Start components in the daily program of activities.

(c) Involve parents in educational activities of the program to enhance their role as the principal influence on the child's education and development.

(d) Assist parents to increase knowledge, understanding, skills, and experience in child growth and development.

(e) Identify and reinforce experience which occur in the home that parents can utilize as educational activities for their children.

§ 1304.2–2 Education services plan content: Operations.

(a) The education services component of the performance standards plan shall provide strategies for achieving the education objectives. In so doing it shall provide for program activities that include an organized series of experiences designed to meet the individual differences and needs of participating children, the special needs of handicapped children, the needs of specific educational priorities of the local population and the community. Program activities must be carried out in a manner to avoid sex role stereotyping. In addition, the plan shall provide methods for assisting parents in understanding and using alternative ways to foster learning and development of their children.

(b) The education services component of the plan shall provide for:

(1) *A supportive social and emotional climate* which:

(i) Enhances children's understanding of themselves as individuals, and in relation to others, by providing for individual, small group, and large group, activities;

(ii) Gives children many opportunities for success through program activities;

(iii) Provides an environment of acceptance which helps each child build ethnic pride, a positive self-concept, enhance his individual strengths, and develop facility in social relationships.

(2) Development of intellectual skills by:

(i) Encouraging children to solve problems, initiate activities, explore, experiment, question, and gain mastery through learning by doing;

(ii) Promoting language understanding and use in an atmosphere that encourages easy communication among children and between children and adults;

(iii) Working toward recognition of the symbols for letters and numbers according to the individual developmental level of the children;

(iv) Encouraging children to organize their experiences and understand concepts; and

(v) Providing a balanced program of staff directed and child initiated activities.

(3) Promotion of physical growth by:

(i) Providing adequate indoor and outdoor space, materials, equipment, and time for children to use large and small muscles to increase their physical skills; and

(ii) Providing appropriate guidance while children are using equipment and materials in order to promote children's physical growth.

(c) The education services component of the plan shall provide for a program which is individualized to meet the special needs of children from various populations by:

(1) Having a curriculum which is relevant and reflective of the needs of the population served (bilingual/bicultural,

multi-cultural, rural, urban, reservation, migrant, etc.);

(2) Having staff and program resources reflective of the racial and ethnic population of the children in the program.

(i) Including persons who speak the primary language of the children and are knowledgeable about their heritage; and, at a minimum, when a majority of the children speak a language other than English, at least one teacher or aide interacting regularly with the children must speak their language; and,

(ii) Where only a few children or a single child speak a language different from the rest, one adult in the center should be available to communicate in the native language;

(3) Including parents in curriculum development and having them serve as resource persons (e.g., for bilingual-bicultural activities).

(d) The education services component of the plan shall provide procedures for on-going observation, recording and evaluation of each child's growth and development for the purpose of planning activities to suit individual needs. It shall provide, also, for integrating the educational aspects of other Head Start components into the daily education services program.

(e) The plan shall provide methods for enhancing the knowledge and understanding of both staff and parents of the educational and developmental needs and activities of children in the program. These shall include:

(1) Parent participation in planning the education program, and in center, classroom and home program activities;

(2) Parent training in activities that can be used in the home to reinforce the learning and development of their children in the center;

(3) Parent training in the observation of growth and development of their children in the home environment and identification of and handling special developmental needs;

(4) Participation in staff and staff-parent conferences and the making of periodic home visits (no less than two) by members of the education staff;

(5) Staff and parent training, under a program jointly developed with all components of the Head Start program, in child development and behavioral developmental problems of preschool children; and

(6) Staff training in identification of and handling children with special needs and working with the parents of such children, and in coordinating relevant referral resources.

§ 1304.2–3 Education services plan content: Facilities.

(a) The education services component of the plan shall provide for a physical environment conducive to learning and reflective of the different stages of development of the children. Home-based projects must make affirmative efforts to achieve this environment. For center-based programs, space shall be organized into functional areas recognized by the children, and space, light, ventilation, heat, and other physical arrangements must be consistent with the health, safety, and developmental needs of the children. To comply with this standard:

(1) There shall be a safe and effective heating system;

(2) No highly flammable furnishings or decorations shall be used.

(3) Flammable and other dangerous materials and potential poisons shall be stored in locked cabinets or storage facilities accessible only to authorized persons;

(4) Emergency lighting shall be available in case of power failure;

(5) Approved, working fire extinguishers shall be readily available;

(6) Indoor and outdoor premises shall be kept clean and free, on a daily basis, of undesirable and hazardous material and conditions;

(7) Outdoor play areas shall be made so as to prevent children from leaving the premises and getting into unsafe and unsupervised areas;

(8) Paint coatings in premises used for care of children shall be determined to assure the absence of a hazardous quantity of lead;

(9) Rooms shall be well lighted;

(10) A source of water approved by the appropriate local authority shall be available in the facility; and adequate toilets and handwashing facilities shall be available and easily reached by children;

(11) All sewage and liquid wastes shall be disposed of through a sewer system approved by an appropriate, responsible authority, and garbage and trash shall be stored in a safe and sanitary manner until collected;

(12) There shall be at least 35 square feet of indoor space per child available for the care of children (i.e., exclusive of bathrooms, halls, kitchen, and storage places). There shall be at least 75 square feet per child outdoors; and

(13) Adequate provisions shall be made for handicapped children to ensure their safety and comfort.

Evidence that the center meets or exceeds State or local licensing requirements for similar kinds of facilities for fire, health and safety shall be accepted as prima facie compliance with the fire, health and safety requirements of this section.

(b) The plan shall provide for appropriate and sufficient furniture, equipment and materials to meet the needs of the program, and for their arrangement in such a way as to facilitate learning, assure a balanced program of spontaneous and structured activities, and encourage self-reliance in the children. The equipment and materials shall be:

(1) Consistent with the specific educational objectives of the local program;

(2) Consistent with the cultural and ethnic background of the children;

(3) Geared to the age, ability, and developmental needs of the children;

(4) Safe, durable, and kept in good condition;

(5) Stored in a safe and orderly fashion when not in use;

(6) Accessible, attractive, and inviting to the children; and

(7) Designed to provide a variety of learning experiences and to encourage experimentation and exploration.

Subpart C—Health Services Objectives and Performance Standards

§ 1304.3–1 Health services general objectives.

The general objectives of the health services component of the Head Start program are to:

(a) Provide a comprehensive health services program which includes a broad range of medical, dental, mental health and nutrition services to preschool children, including handicapped children, to assist the child's physical, emotional, cognitive and social development toward the overall goal of social competence.

(b) Promote preventive health services and early intervention.

(c) Provide the child's family with the necessary skills and insight and otherwise attempt to link the family to an ongoing health care system to ensure that the child continues to receive comprehensive health care even after leaving the Head Start program.

§ 1304.3–2 Health Services Advisory Committee.

The plan shall provide for the creation of a Health Services Advisory Committee whose purpose shall be advising in the planning, operation and evaluation of the health services program and which shall consist of Head Start parents and health services providers in the community and other specialists in the various health disciplines. (Existing committees may be modified or combined to carry out this function.)

§ 1304.3–3 Medical and dental history, screening, and examinations.

(a) The health services component of the performance standards plan shall provide that for each child enrolled in the Head Start program a complete medical, dental and developmental history will be obtained and recorded, a thorough health screening will be given, and medical and dental examinations will be performed. The plan will provide also for advance parent or guardian authorization for all health services under this subpart.

(b) Effective with the beginning of the 1993–94 program year, grantees must provide for health and developmental screenings by 45 days after the beginning of services for children in the fall, or for a child who enters late, by 45 days after the child enters into the program and must include:

(1) Growth assessment (head circumference up to two years old), height, weight and age.

(2) Vision testing.
(3) Hearing testing.
(4) Hemoglobin or hematocrit determination.
(5) Tuberculin testing indicated in ACYF Head Start Guidance Material.
(6) Urinalysis.
(7) Based on community health problems, other selected screenings where appropriate, e.g., sickle cell anemia, lead poisoning, and intestinal parasites.
(8) Assessment of current immunization status.
(9) During the course of health screening, procedures must be in effect for identifying speech problems, determining their cause, and providing services.
(10) Identification of the special needs of handicapped children.
(c) Medical examinations for children shall include:
(1) Examination of all systems or regions which are made suspect by the history or screening test.
(2) Search for certain defects in specific regions common or important in this age group, i.e., skin, eye, ear, nose, throat, heart, lungs, and groin (inguinal) area.
(d) The plan shall provide, also, in accordance with local and state health regulations that employed program staff have initial health examinations, periodic check-ups, and are found to be free from communicable disease; and, that voluntary staff be screened for tuberculosis.

[40 FR 27562, June 30, 1975, as amended at 58 FR 5518, Jan. 21, 1993]

§ 1304.3–4 Medical and dental treatment.

(a) The plan shall provide for treatment and follow-up services which include:
(1) Obtaining or arranging for treatment of all health problems detected. (Where funding is provided by non-Head Start funding sources there must be written documentation that such funds are used to the maximum feasible extent. Head Start funds may be used only when no other source of funding is available).
(2) Completion of all recommended immunizations—diptheria, pertussis, tetanus (DPT), polio, measles, German measles. Mumps immunization shall be provided where appropriate.
(3) Obtaining or arranging for basic dental care services as follows:
(i) Dental examination.
(ii) Services required for the relief of pain or infection.
(iii) Restoration of decayed primary and permanent teeth.
(iv) Pulp therapy for primary and permanent teeth as necessary.
(v) Extraction of non-restorable teeth.
(vi) Dental prophylaxis and instruction in self-care oral hygiene procedures.
(vii) Application of topical fluoride in communities which lack adequate fluoride levels in the public water supply.
(b) There must be a plan of action for medical emergencies. (Indicated in ACYF Head Start Guidance Material.)

§ 1304.3–5 Medical and dental records.

The plan shall provide for:
(a) The establishment and maintenance of individual health records which contain the child's medical and developmental history, screening results, medical and dental examination data, and evaluation of this material, and up-to-date information about treatment and follow-up;
(b) Forwarding, with parent consent, the records to either the school or health delivery system or both when the child leaves the program; and
(c) Giving parents a summary of the record which includes information on immunization and follow-up treatment; and
(d) Utilization of the Health Program Assessment Report (HPAR); and
(e) Assurance that in all cases parents will be told the nature of the data to be collected and the uses to which the data will be put, and that the uses will be restricted to the stated purposes.

§ 1304.3–6 Health education.

(a) The plan shall provide for an organized health education program for program staff, parents and children which ensures that:
(1) Parents are provided with information about all available health resources;

(2) Parents are encouraged to become involved in the health care process relating to their child. One or both parents should be encouraged to accompany their child to medical and dental exams and appointments;

(3) Staff are taught and parents are provided the opportunity to learn the principles of preventive health, emergency first-aid measures, and safety practices;

(4) Health education is integrated into on-going classroom and other program activities.

(5) The children are familiarized with all health services they will receive prior to the delivery of those services.

§ 1304.3–7 Mental health objectives.

The objectives of the mental health part of the health services component of the Head Start program are to:

(a) Assist all children participating in the program in emotional, cognitive and social development toward the overall goal of social competence in coordination with the education program and other related component activities;

(b) Provide handicapped children and children with special needs with the necessary mental health services which will ensure that the child and family achieve the full benefits of participation in the program;

(c) Provide staff and parents with an understanding of child growth and development, an appreciation of individual differences, and the need for a supportive environment;

(d) Provide for prevention, early identification and early intervention in problems that interfere with a child's development;

(e) Develop a positive attitude toward mental health services and a recognition of the contribution of psychology, medicine, social services, education and other disciplines to the mental health program; and

(f) Mobilize community resources to serve children with problems that prevent them from coping with their environment.

§ 1304.3–8 Mental health services.

(a) The mental health part of the plan shall provide that a mental health professional shall be available, at least on a consultation basis, to the Head Start program and to the children. The mental health professional shall:

(1) Assist in planning mental health program activities;

(2) Train Head Start staff;

(3) Periodically observe children and consult with teachers and other staff;

(4) Advise and assist in developmental screening and assessment;

(5) Assist in providing special help for children with atypical behavior or development, including speech;

(6) Advise in the utilization of other community resources and referrals;

(7) Orient parents and work with them to achieve the objectives of the mental health program; and

(8) Take appropriate steps in conjunction with health and education services to refer children for diagnostic examination to determine whether their emotional or behavior problems have a physical basis.

(b) The plan shall also provide for:

(1) Attention to pertinent medical and family history of each child so that mental health services can be made readily available when needed;

(2) Use of existing community mental health resources;

(3) Coordination with the education services component to provide a program keyed to individual developmental levels;

(4) Confidentiality of records;

(5) Regular group meetings of parents and program staff;

(6) Parental consent for special mental health services;

(7) Opportunity for parents to obtain individual assistance; and,

(8) Active involvement of parents in planning and implementing the individual mental health needs of their children.

§ 1304.3–9 Nutrition objectives.

The objectives of the nutrition part of the health services component of the Head Start program are to:

(a) Help provide food which will help meet the child's daily nutritional needs in the child's home or in another clean and pleasant environment, recognizing individual differences and cultural patterns, and thereby promote sound physical, social, and emotional growth and development.

(b) Provide an environment for nutritional services which will support and promote the use of the feeding situation as an opportunity for learning;

(c) Help staff, child and family to understand the relationship of nutrition to health, factors which influence food practices, variety of ways to provide for nutritional needs and to apply this knowledge in the development of sound food habits even after leaving the Head Start program;

(d) Demonstrate the interrelationships of nutrition to other activities of the Head Start program and its contribution to the overall child development goals; and

(e) Involve all staff, parents and other community agencies as appropriate in meeting the child's nutritional needs so that nutritional care provided by Head Start complements and supplements that of the home and community.

§ 1304.3–10 Nutrition services.

(a) The nutrition services part of the health services component of the performance standards plan must identify the nutritional needs and problems of the children in the Head Start program and their families. In so doing account must be taken of:

(1) The nutrition assessment data (height, weight, hemoglobin hematocrit) obtained for each child;

(2) Information about family eating habits and special dietary needs and feeding problems, especially of handicapped children; and,

(3) Information about major community nutrition problems.

(b) The plan, designed to assist in meeting the daily nutritional needs of the children, shall provide that:

(1) Every child in a part-day program will receive a quantity of food in meals (preferably hot) and snacks which provides at least ⅓ of daily nutritional needs, with consideration for meeting any special needs of children, including the child with a handicapping condition;

(2) Every child in a full-day program will receive snack(s), lunch, and other meals as appropriate which will provide ½ to ⅔ of daily nutritional needs depending on the length of the program;

(3) All children in morning programs who have not received breakfast at the time they arrive at the Head Start program will be served a nourishing breakfast;

(4) The kinds of food served conform to minimum standards for meal patterns indicated in ACYF Head Start Guidance Material;

(5) The quantities of food served conform to recommended amounts indicated in ACYF Head Start guidance materials; and,

(6) Meal and snack periods are scheduled appropriately to meet children's needs and are posted along with menus; e.g., breakfast must be served at least 2½ hours before lunch, and snacks must be served at least 1½ hours before lunch or supper.

(c) The plan shall undertake to assure that the nutrition services contribute to the development and socialization of the children by providing that:

(1) A variety of foods which broaden the child's food experience in addition to those that consider cultural and ethnic preferences is served;

(2) Food is not used as punishment or reward, and that children are encouraged but not forced to eat or taste;

(3) The size and number of servings of food reflect consideration of individual children's needs;

(4) Sufficient time is allowed for children to eat;

(5) Chairs, tables, and eating utensils are suitable for the size and developmental level of the children with special consideration for meeting the needs of children with handicapping conditions;

(6) Children and staff, including volunteers, eat together sharing the same menu and a socializing experience in a relaxed atmosphere; and

(7) Opportunity is provided for the involvement of children in activities related to meal service. (For example: family style service.)

(d) The plan shall set forth an organized nutrition education program for staff, parents, and children. This program shall assure that:

(1) Meal periods and food are planned to be used as an integral part of the total education program;

(2) Children participate in learning activities planned to effect the selection and enjoyment of a wide variety of nutritious foods;

(3) Families receive education in the selection and preparation of foods to meet family needs, guidance in home and money management and help in consumer education so that they can fulfill their major role and responsibility for the nutritional health of the family;

(4) All staff, including administrative, receive education in principles of nutrition and their application to child development and family health, and ways to create a good physical, social and emotional environment which supports and promotes development of sound food habits and their role in helping the child and family to achieve adequate nutrition.

(e) The plan shall make special provision for the involvement of parents and appropriate community agencies in planning, implementing, and evaluating the nutrition services. It shall provide that:

(1) The Policy Council or Committee and the Health Services Advisory Committee have opportunity to review and comment on the nutrition services;

(2) The nutritional status of the children will be discussed with their parents;

(3) Information about menus and nutrition activities will be shared regularly with parents;

(4) Parents are informed of the benefits of food assistance programs; and

(5) Community agencies are enlisted to assist eligible families participate in food assistance programs.

(f) The plan shall provide for compliance with applicable local, State, and Federal sanitation laws and regulations for food service operations including standards for storage, preparation and service of food, and health of food handlers, and for posting of evidence of such compliance. The plan shall provide, also, that vendors and caterers supplying food and beverages comply with similar applicable laws and regulations.

(g) The plan shall provide for direction of the nutrition services by a qualified full-time staff nutritionist or for periodic and regularly scheduled supervision by a qualified nutritionist or dietitian as defined in the Head Start Guidance Material. Also, the plan shall provide that all nutrition services staff will receive preservice and in-service training as necessary to demonstrate and maintain proficiency in menu planning, food purchasing, food preparation and storage, and sanitation and personal hygiene.

(h) The plan shall provide for the establishment and maintenance of records covering the nutrition services budget, expenditures for food, menus utilized, numbers and types of meals served daily with separate recordings for children and adults, inspection reports made by health authorities, recipes and any other information deemed necessary for efficient operation.

Subpart D—Social Services Objectives and Performance Standards

§ 1304.4–1 Social services objectives.

The objectives of the social services component of the performance standards plan are to:

(a) Establish and maintain an outreach and recruitment process which systematically insures enrollment of eligible children.

(b) Provide enrollment of eligible children regardless of race, sex, creed, color, national origin, or handicapping condition.

(c) Achieve parent participation in the center and home program and related activities.

(d) Assist the family in its own efforts to improve the condition and quality of family life.

(e) Make parents aware of community services and resources and facilitate their use.

§ 1304.4–2 Social services plan content.

(a) The social services plan shall provide procedures for:

(1) Recruitment of children, taking into account the demographic make-up of the community and the needs of the children and families;

(2) Recruitment of handicapped children;

(3) Providing or referral for appropriate counseling;

(4) Emergency assistance or crisis intervention;

(5) Furnishing information about available community services and how to use them;

(6) Follow-up to assure delivery of needed assistance;

(7) Establishing a role of advocacy and spokesman for Head Start families;

(8) Contacting of parent or guardian with respect to an enrolled child whose participation in the Head Start program is irregular or who has been absent four consecutive days; and

(9) Identification of the social service needs of Head Start families and working with other community agencies to develop programs to meet those needs.

(b) The plan shall provide for close cooperation with existing community resources including:

(1) Helping Head Start parent groups work with other neighborhood and community groups with similar concerns;

(2) Communicating to other community agencies the needs of Head Start families and ways of meeting these needs;

(3) Helping to assure better coordination, cooperation, and information sharing with community agencies;

(4) Calling attention to the inadequacies of existing community services, or to the need for additional services, and assisting in improving available services, or bringing in new services; and

(5) Preparing and making available a community resource list to Head Start staff and families.

(c) The plan shall provide for the establishment, maintenance, and confidentiality of records of up-to-date, pertinent family data, including completed enrollment forms, referral and follow-up reports, reports of contacts with other agencies, and reports of contacts with families.

Subpart E—Parent Involvement Objectives and Performance Standards

§ 1304.5–1 Parent involvement objectives.

The objectives of the parent involvement component of the performance standards plan are to:

(a) Provide a planned program of experiences and activities which support and enhance the parental role as the principal influence in their child's education and development.

(b) Provide a program that recognizes the parent as:

(1) Responsible guardians of their children's well being.

(2) Prime educators of their children.

(3) Contributors to the Head Start program and to their communities.

(c) Provide the following kinds of opportunities for parent participation:

(1) Direct involvement in decision making in program planning and operations.

(2) Participation in classroom and other program activities as paid employees, volunteers or observers.

(3) Activities for parents which they have helped to develop.

(4) Working with their own children in cooperation with Head Start staff.

§ 1304.5–2 Parent Involvement Plan content: Parent participation.

(a) The basic parent participation policy of the Head Start program, with which all Head Start programs must comply as a condition of being granted financial assistance, is contained in Head Start Policy Manual, Instruction I–31—Section B2, The Parents (ACYF Transmittal Notice 70.2, dated August 10, 1970). This policy manual instruction is set forth in Appendix B to this part.

(b) The plan shall describe in detail the implementation of Head Start Policy Manual Instruction I–31—section B2, The Parents (Appendix B). The plan shall assure that participation of Head Start parents is voluntary and shall not be required as a condition of the child's enrollment.

§ 1304.5–3 Parent Involvement Plan content: Enhancing development of parenting skills.

The plan shall provide methods and opportunities for involving parents in:

(a) Experiences and activities which lead to enhancing the development of their skills, self-confidence, and sense of independence in fostering an environment in which their children can develop to their full potential.

(b) Experiences in child growth and development which will strengthen their role as the primary influence in their children's lives.

(c) Ways of providing educational and developmental activities for children in the home and community.

(d) Health, mental health, dental and nutrition education.

(e) Identification, and use, of family and community resources to meet the basic life support needs of the family.

(f) Identification of opportunities for continuing education which may lead towards self-enrichment and employment.

(g) Meeting with the Head Start teachers and other appropriate staff for discussion and assessment of their children's individual needs and progress.

§ 1304.5–4 Parent Involvement Plan content: Communications among program management, program staff, and parents.

(a) The plan shall provide for two-way communication between staff and parents carried out on a regular basis throughout the program year which provides information about the program and its services; program activities for the children; the policy groups; and resources within the program and the community. Communication must be designed and carried out in a way which reaches parents and staff effectively. Policy Groups, staff and parents must participate in the planning and development of the communication system used.

(b) The plan shall provide a system for the regular provision of information to members of Policy Groups. The purpose of such communication is to enable the Policy Group to make informed decisions in a timely and effective manner, to share professional expertise and generally to be provided with staff support. At a minimum, information provided will include:

(1) Timetable for planning, development, and submission of proposals;

(2) Head Start policies, guidelines, and other communications from the Administration on Children, Youth and Families;

(3) Financial reports and statements of funds expended in the Head Start account; and

(4) Work plans, grant applications, and personnel policies for Head Start.

(c) The entire Head Start staff shall share responsibility for providing assistance in the conduct of the above activities. In addition, Health Services, Education, and Social Services staff shall contribute their direct services to assist the Parent Involvement staff. If staff resources are not available, the necessary resources shall be sought within the community.

§ 1304.5–5 Parent Involvement Plan content: Parents, area residents, and the program.

The plan shall provide for:

(a) The establishment of effective procedures by which parents and area residents concerned will be enabled to influence the character of programs affecting their interests.

(b) Their regular participation in the implementation of such programs and,

(c) Technical and other support needed to enable parents and area residents to secure on their own behalf available assistance from public and private sources.

APPENDIX A TO PART 1304—[RESERVED]

APPENDIX B TO PART 1304—HEAD START POLICY MANUAL: THE PARENTS

This appendix sets forth policy governing the involvement of parents of Head Start children ''. . . in the development, conduct, and overall program direction at the local level.''

I–30–2 The Parents

A. INTRODUCTION

Head Start believes that the gains made by the child in Head Start must be understood and built upon by the family and the community. To achieve this goal, Head Start provides for the involvement of the child's parents and other members of the family in the experiences he receives in the child development center by giving them many opportunities for a richer appreciation of the young child's needs and how to satisfy them.

Many of the benefits of Head Start are rooted in ''change''. These changes must take place in the family itself, in the community, and in the attitudes of people and institutions that have an impact on both.

It is clear that the success of Head Start in bringing about substantial changes demands the fullest involvement of the parents, parental-substitutes, and families of children

enrolled in its programs. This involvement begins when a Head Start program begins and should gain vigor and vitality as planning and activities go forward.

Successful parental involvement enters into every part of Head Start, influences other anti-poverty programs, helps bring about changes in institutions in the community, and works toward altering the social conditions that have formed the systems that surround the economically disadvantaged child and his family.

Project Head Start must continue to discover new ways for parents to become deeply involved in decision-making about the program and in the development of activities that they deem helpful and important in meeting their particular needs and conditions. For some parents, participation may begin on a simple level and move to more complex levels. For other parents the movement will be immediate, because of past experiences, into complex levels of sharing and giving. Every Head Start program is obligated to provide the channels through which such participation and involvement can be provided for and enriched.

Unless this happens, the goals of Head Start will not be achieved and the program itself will remain a creative experience for the preschool child in a setting that is not reinforced by needed changes in social systems into which the child will move after his Head Start experience.

This sharing in decisions for the future is one of the primary aims of parent participation and involvement in Project Head Start.

B. THE ROLE OF THE PARENTS

Every Head Start Program Must Have Effective Parent Participation. There are at least four major kinds of parent participation in local Head Start programs.

1. PARTICIPATION IN THE PROCESS OF MAKING DECISIONS ABOUT THE NATURE AND OPERATION OF THE PROGRAM.

2. PARTICIPATION IN THE CLASSROOM AS PAID EMPLOYEES, VOLUNTEERS OR OBSERVERS.

3. ACTIVITIES FOR THE PARENTS WHICH THEY HAVE HELPED TO DEVELOP.

4. WORKING WITH THEIR CHILDREN IN COOPERATION WITH THE STAFF OF THE CENTER.

Each of these is essential to an effective Head Start program both at the grantee level and the delegate agency level. Every Head Start program must hire/designate a Coordinator of Parent Activities to help bring about appropriate parent participation. This staff member may be a volunteer in smaller communities.

1. Parent Participation in the Process of Making Decisions About the Nature and Operation of the Program

Head Start Policy Groups

a. *Structure.* The formal structure by which parents can participate in policy making and operation of the program will vary with the local administrative structure of the program.

Normally, however, the Head Start policy groups will consist of the following:

1. *Head Start Center Committee.* This committee must be set up at the center level. Where centers have several classes, it is recommended that there also be parent class committees.

2. *Head Start Policy Committee.* This committee must be set up at the delegate agency level when the program is administered in whole or in part by such agencies.

3. *Head Start Policy Council.* This Council must be set up at the grantee level.

When a grantee has delegated the entire Head Start program to one Delegate Agency, it is not necessary to have a Policy Council in addition to a Delegate Agency Policy Committee. Instead one policy group serves both the Grantee Board and the Delegate Agency Board.

b. *Composition.* Chart A describes the composition of each of these groups.

CHART A

Organization	Composition
1. Head Start Center Committee	1. Parents whose children are enrolled in that center.
2. Head Start Policy Committee (delegate agency)	2. At least 50% parents of Head Start children presently enrolled in that delegate agency program plus representatives of the community.[1]
3. Head Start Policy Council (grantee)	3. At least 50% parents of Head Start children presently enrolled in that grantee's program plus representatives of the community.[2]

[1] *Representatives of the Community* (*Delegate Agency level*): A representative of neighborhood community groups (public and private) and of local neighborhood community or professional organizations, which have a concern for children of low income families and can contribute to the development of the program. The number of such representatives will vary depending on the number of organizations which should appropriately be represented. The Delegate Agency determines the composition of their committee (within the above guidelines) and methods to be used in selecting representatives of the community. Parents of former Head Start children may serve as representatives of the community on delegate agency policy groups. All representatives of the community selected by the agency must be approved by elected parent members of the committee. In no case, however, should representatives of the community exceed 50% of the total committee.

[2] *Representatives of the Community* (*Grantee Agency level*)*:* A representative of major agencies (public and private) and major community civic or professional organizations which have a concern for children of low income families and can contribute to the program. The number of such representatives will vary, depending on the number of organizations which should appropriately be represented. The applicant agency determines the composition of the council (within the above guidelines) and the methods to be used in selecting representatives of the community. Parents of former Head Start children may serve as representatives of the community on grantee agency policy groups. All representatives of the community selected by the agency must be approved by elected parent members of the committee. In no case, however, should representatives of the community exceed 50% of the total committee or council.

Special Notes

1. All parents serving on policy groups must be elected by parents of Head Start children currently enrolled in the program.

2. It is strongly recommended that the community action agency board have representation from the Head Start Policy Council to assure coordination of Head Start activities with other CAA programs. Conversely, community action agency board representation on the Policy Council is also recommended.

3. It is important that the membership of policy groups be rotated to assure a regular influx of new ideas into the program. For this purpose, terms of membership must be limited to no more than three years.

4. No staff member (nor members of their families as defined in CAP Memo 23A) of the applicant or delegate agencies shall serve on the council or committee in a voting capacity. Staff members may attend the meetings of councils or committees in a consultative non-voting capacity upon request of the council or committee.

5. Every corporate board operating a Head Start program must have a Policy Committee or Council as defined by HHS. The corporate body and the Policy Committee or Council must not be one and the same.

6. Policy groups for summer programs present a special problem because of the difficulty of electing parent representatives in advance. Therefore, the policy group for one summer program must remain in office until its successors have been elected and taken office. The group from the former program should meet frequently between the end of the program and the election of new members to assure some measure of program continuity. These meetings should be for the purpose of (a) assuring appropriate follow up of the children (b) aiding the development of the upcoming summer Head Start program, (c) writing of the application, (d) hiring of the director and establishment of criteria for hiring staff and, when necessary (e) orientation of the new members. In short, the policy group from a former program must not be dissolved until a new group is elected. The expertise of those parents who have previously served should be used whenever possible.

c. *Functions.* The following paragraphs and charts describe the minimum functions and degrees of responsibility for the various policy groups involved in administration of local Head Start programs. *Local groups may negotiate for additional functions and a greater share of responsibility if all parties agree.* All such agreements are subject to such limitations as may be called for by HHS policy. Questions about this should be referred to your HHS regional office.

(1) The Head Start Center Committee shall carry out at least the following minimum responsibilities:

(a) Assists teacher, center director, and all other persons responsible for the development and operation of every component including curriculum in the Head Start program.

(b) Works closely with classroom teachers and all other component staff to carry out the daily activities program.

(c) Plans, conducts, and participates in informal as well as formal programs and activities for center parents and staff.

(d) Participates in recruiting and screening of center employees within guidelines established by HHS, the Grantee Council and Board, and Delegate Agency Committee and Board.

(2) *The Head Start Policy Committee.* Chart B outlines the major management functions connected with local Head Start program administered by delegate agencies and the degree of responsibility assigned to each participating group.

In addition to those listed functions, the committee shall:

(a) Serve as a link between public and private organizations, the grantee Policy Council, the Delegate Agency Board of Directors, and the community it serves.

(b) Have the opportunity to initiate suggestions and ideas for program improvements and to receive a report on action taken by the administering agency with regard to its recommendations.

(c) Plan, coordinate and organize agency-wide activities for parents with the assistance of staff.

(d) Assist in communicating with parents and encouraging their participation in the program.

(e) Aid in recruiting volunteer services from parents, community residents and community organizations, and assist in the mobilization of community resources to meet identified needs.

(f) Administer the Parent Activity funds.

(3) *The Head Start Policy Council.* Chart C outlines the major management functions connected with the Head Start program at the grantee level, whether it be a community

action or limited purpose agency, and the degree of responsibility assigned to each participating group.

In addition to those listed functions, the Council shall:

(a) Serve as a link between public and private organizations, the Delegate Agency Policy Committees, Neighborhood Councils, the Grantee Board of Directors and the community it serves.

(b) Have the opportunity to initiate suggestions and ideas for program improvements and to receive a report on action taken by the administering agency with regard to its recommendations.

(c) Plan, coordinate and organize agency-wide activities for parents with the assistance of staff.

(d) Approve the selection of Delegate Agencies.

(e) Recruit volunteer services from parents, community residents and community organizations, and mobilizes community resources to meet identified needs.

(f) Distribute Parent Activity funds to Policy Committees.

It may not be easy for Head Start directors and professional staff to share responsibility when decisions must be made. Even when they are committed to involving parents, the Head Start staff must take care to avoid dominating meetings by force of their greater training and experience in the process of decisionmaking. At these meetings, professionals may be tempted to do most of the talking. They must learn to ask parents for their ideas, and listen with attention, patience and understanding. Self-confidence and self-respect are powerful motivating forces. Activities which bring out these qualities in parents can prove invaluable in improving family life of young children from low income homes.

Members of Head Start Policy Groups whose family income falls below the ''poverty line index'' may receive meeting allowances or be reimbursed for travel, per diem, meal and baby sitting expenses incurred because of Policy Group meetings. The procedures necessary to secure reimbursement funds and their regulations are detailed in OEO Instruction #6803–1.

2. Participation in the Classroom as Paid Employees, Volunteers or Observers

Head Start classes must be open to parents at times reasonable and convenient to them. There are very few occasions when the presence of a limited number of parents would present any problem in operation of the program.

Having parents in the classroom has three advantages. It:

a. Gives the parents a better understanding of what the center is doing for the children and the kinds of home assistance they may require.

b. Shows the child the depth of his parents concern.

c. Gives the staff an opportunity to know the parents better and to learn from them.

There are, of course, many center activities outside the classroom (e.g., field trips, clinic visits, social occasions) in which the presence of parents is equally desirable.

Parents are one of the categories of persons who must receive preference for employment as non-professionals. Participation as volunteers may also be possible for many parents. Experience obtained as a volunteer may be helpful in qualifying for non-professional employment. At a minimum parents should be encouraged to observe classes several times. In order to permit fathers to observe it might be a good idea to have some parts of the program in the evening or on weekends.

Head Start Centers are encouraged to set aside space within the Center which can be used by parents for meetings and staff conferences.

3. Activities for Parents Which They Have Helped To Develop

Head Start programs must develop a plan for parent education programs which are responsive to needs expressed by the parents themselves. Other community agencies should be encouraged to assist in the planning and implementation of these programs.

Parents may also wish to work together on community problems of common concern such as health, housing, education and welfare and to sponsor activities and programs around interests expressed by the group. Policy Committees must anticipate such needs when developing program proposals and include parent activity funds to cover the cost of parent sponsored activities.

4. Working With Their Children in Their Own Home in Connection with the Staff of the Center

HHS requires that each grantee make home visits a part of its program when parents permit such visits. Teachers should visit parents of summer children a minimum of once; in full year programs there should be at least three visits, if the parents have consented to such home visits. (Education staff are now required to make no less than two home visits during a given program year in accordance with §1304.2–2(e)(4).) In those rare cases where a double shift has been approved for teachers it may be necessary to use other types of personnel to make home visits. Personnel, such as teacher aides, health aides and social workers may also make home visits with, or independently of, the teaching staff but coordinated through the parent program staff in order to eliminate uncoordinated visits.

Head Start staff should develop activities to be used at home by other family members

that will reinforce and support the child's total Head Start experience.

Staff, parents and children will all benefit from home visits and activities. Grantees shall not require that parents permit home visits as a condition of the child's participation in Head Start. However, every effort must be made to explain the advantages of visits to parents.

Definitions as used on charts B and C

A. General Responsibility. The individual or group with legal and fiscal responsibility guides and directs the carrying out of the function described through the person or group given operating responsibility.

B. Operating Responsibility. The individual or group that is directly responsible for carrying out or performing the function, consistent with the general guidance and direction of the individual or group holding general responsibility.

C. Must Approve or Disapprove. The individual or group (other than persons or groups holding general and operating responsibility, A and B above) must approve before the decision is finalized or action taken. The individual or group must also have been consulted in the decision making process prior to the point of seeking approval.

If they do not approve, the proposal cannot be adopted, or the proposed action taken, until agreement is reached between the disagreeing groups or individuals.

D. Must be Consulted. The individual or group must be called upon before any decision is made or approval is granted to give advice or information but not to make the decision or grant approval.

E. May be Consulted. The individual or group may be called upon for information, advice or recommendations by those individuals or groups having general responsibility or operating responsibility.

Function	Chart B—Delegate agency				Chart C—Grantee agency			
	Board	Executive director	Head Start policy committee	Head Start director	Board	Executive director	Head Start policy council	Head Start director
I. PLANNING								
(a) Identify child development needs in the area to be served (by CAA[1] if not delegated)	A	B	D	D	A	B	D	D
(b) Establish goals of Head Start program and develop ways to meet them within HHS guidelines	A	C	C	B	A	C	C	B
(c) Determine delegate agencies and areas in the community in which Head Start programs will operate	.....	.....	.....	.....	A	D	C	B
(d) Determine location of centers or classes	A	D	C	B	.....	.....	.....	.....
(e) Develop plans to use all available community resources in Head Start	A	D	C	B	A	D	C	B
(f) Establish criteria for selection of children within applicable laws and HHS guidelines	.....	.....	.....	.....	A	C	C	B
(g) Develop plan for recruitment of children	A	C	C	B	.....	.....	.....	.....
II. GENERAL ADMINISTRATION								
(a) Determine the composition of the appropriate policy group and the method for setting it up (within HHS guidelines)	A	B	C	D	A	B	C	D
(b) Determine what services should be provided to Head Start from the CAA[1] central office and the neighborhood centers	.....	.....	.....	.....	A	B	C	D
(c) Determine what services should be provided to Head Start from delegate agency	A	B	C	D	.....	.....	.....	.....
(d) Establish a method of hearing and resolving community complaints about the Head Start program	D	C	A	B	D	C	A	B
(e) Direct the CAA[1] Head Start staff in day-to-day operations	.....	.....	.....	.....	E	A	E	B
(f) Direct the delegate agency Head Start staff in day-to-day operations	E	A	E	B	.....	.....	.....	.....
(g) Insure that standards for acquiring space, equipment, and supplies are met	A	D	D	B	A	D	D	B

Function	Chart B—Delegate agency				Chart C—Grantee agency			
	Board	Executive director	Head Start policy committee	Head Start director	Board	Executive director	Head Start policy council	Head Start director
III. PERSONNEL ADMINISTRATION								
(a) Determine Head Start personnel policies (including establishment of hiring and firing criteria for Head Start staff, career development plans, and employee grievance procedures).								
Grantee agency	.....	.....	.....	.....	A	C	C	B
Delegate agency	A	C	C	B	.....	.....	.....	.....
(b) Hire and fire Head Start Director of grantee agency	.....	.....	.....	.....	A	B	C	.....
(c) Hire and fire Head Start staff of grantee agency	.....	.....	.....	.....	E	A	C	B
(d) Hire and fire Head Start Director of delegate agency	A	B	C	.....	.....	.....	.....	.....
(e) Hire and fire Head Start staff of delegate agency	E	A	C	B	.....	.....	.....	.....
IV. GRANT APPLICATION PROCESS								
(a) Prepare request for funds and proposed work program:								
Prior to sending to CAA[1]	A	C	C	B	.....	.....	.....	.....
Prior to sending to HHS	.....	.....	.....	.....	A	C	C	B
(b) Make major changes in budget and work program while program is in operation	A	C	C	B	A	C	C	B
(c) Provide information needed for prereview to policy council	A	D	C	B	.....	.....	.....	.....
(d) Provide information needed for prereview to HHS	.....	.....	.....	.....	A	D	C	B
V. EVALUATION								
Conduct self-evaluation of agency's Head Start program	A	D	B	D	A	D	B	D

[1] CAA or general term ''grantee''.

A=General responsibility
B=Operating responsibility
C=Must approve or disapprove
D=Must be consulted
E=May be consulted

PART 1305—ELIGIBILITY, RECRUITMENT, SELECTION, ENROLLMENT AND ATTENDANCE IN HEAD START

Sec.

AUTHORITY: 42 U.S.C. 9801 *et seq.*

SOURCE: 57 FR 46725, Oct. 9, 1992, unless otherwise noted.

§ 1305.1 Purpose and scope.

This part prescribes requirements for determining community needs and recruitment areas. It contains requirements and procedures for the eligibility determination, recruitment, selection, enrollment and attendance of children in Head Start programs and explains the policy concerning the charging of fees by Head Start programs.

§ 1305.2 Definitions.

(a) *Children with disabilities* means children with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments or

specific learning disabilities who, by reason thereof need special education and related services. The term ''children with disabilities'' for children aged 3 to 5, inclusive, may, at a State's discretion, include children experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, need special education and related services.

(b) *Enrollment* means the official acceptance of a family by a Head Start program and the completion of all procedures necessary for a child and family to begin receiving services.

(c) *Enrollment opportunities* mean vacancies that exist at the beginning of the enrollment year, or during the year because of children who leave the program, that must be filled for a program to achieve and maintain its funded enrollment.

(d) *Enrollment year* means the period of time, not to exceed twelve months, during which a Head Start program provides center or home-based services to a group of children and their families.

(e) *Family* means all persons living in the same household who are:

(1) Supported by the income of the parent(s) or guardian(s) of the child enrolling or participating in the program, and (2) related to the parent(s) or guardian(s) by blood, marriage, or adoption.

(f) *Funded enrollment* means the number of children which the Head Start grantee is to serve, as indicated on the grant award.

(g) *Head Start eligible* means a child that meets the requirements for age and family income as established in this regulation or, if applicable, as established by grantees that meet the requirements of section 645(a) (2) of the Head Start Act. Up to ten percent of the children enrolled may be from families that exceed the low-income guidelines.

(h) *Head Start program* means a Head Start grantee or its delegate agency(ies).

(i) *Income* means gross cash income and includes earned income, military income (including pay and allowances), veterans benefits, social security benefits, unemployment compensation, and public assistance benefits.

(j) *Income guidelines* means the official poverty line specified in section 652 of the Head Start Act.

(k) *Low-income family* means a family whose total annual income before taxes is equal to, or less than, the income guidelines. For the purpose of eligibility, a child from a family that is receiving public assistance or a child in foster care is eligible even if the family income exceeds the income guidelines.

(l) *Migrant family* means, for purposes of Head Start eligibility, a family with children under the age of compulsory school attendance who change their residence by moving from one geographic location to another, either intrastate or interstate, within the past twelve months, for the purpose of engaging in agricultural work that involves the production and harvesting of tree and field crops and whose family income comes primarily from this activity.

(m) *Recruitment* means the systematic ways in which a Head Start program identifies families whose children are eligible for Head Start services, informs them of the services available, and encourages them to apply for enrollment in the program.

(n) *Recruitment area* means that geographic locality within which a Head Start program seeks to enroll Head Start children and families. The recruitment area can be the same as the service area or it can be a smaller area or areas within the service area.

(o) *Responsible HHS official* means the official of the U.S. Department of Health and Human Services having authority to make Head Start grant awards, or his or her designee.

(p) *Selection* means the systematic process used to review all applications for Head Start services and to identify those children and families that are to be enrolled in the program.

(q) *Service area* means the geographic area identified in an approved grant application within which a grantee may provide Head Start services.

(r) *Vacancy* means an unfilled enrollment opportunity for a child and family in the Head Start program.

[57 FR 46725, Oct. 9, 1992, as amended at 58 FR 5518, Jan. 21, 1993]

§ 1305.3 Determining community needs.

(a) Each grantee must identify its proposed service area in its Head Start grant application and define it by county or sub-county area, such as a municipality, town or census tract or a federally recognized Indian reservation. A grantee's service area must be approved, in writing, by the responsible HHS official in order to assure that the service area is of reasonable size and does not overlap with that of other Head Start grantees.

(b) Each Head Start grantee must conduct a community needs assessment within its service area once every three years. The community needs assessment must include the collection and analysis of the following information about the grantee's Head Start service area:

(1) The demographic make-up of Head Start eligible children and families, including their estimated number, geographic location, and racial and ethnic composition;

(2) Other child development and child care programs that are serving Head Start eligible children, including publicly funded State and local preschool programs, and the approximate number of Head Start eligible children served by each;

(3) The estimated number of children with disabilities four years old or younger, including types of disabilities and relevant services and resources provided to these children by community agencies;

(4) Data regarding the education, health, nutrition and social service needs of Head Start eligible children and their families;

(5) The education, health, nutrition and social service needs of Head Start eligible children and their families as defined by families of Head Start eligible children and by institutions in the community that serve young children;

(6) Resources in the community that could be used to address the needs of Head Start eligible children and their families, including assessments of their availability and accessibility.

(c) The Head Start grantee must use information from the community needs assessment to:

(1) Help determine the grantee's philosophy, and its long-range and short-range program objectives;

(2) Determine the type of component services that are most needed and the program option or options that will be implemented;

(3) Determine the recruitment area that will be served by the grantee, if limitations in the amount of resources make it impossible to serve the entire service area.

(4) If there are delegate agencies, determine the recruitment area that will be served by the grantee and the recruitment area that will be served by each delegate agency.

(5) Determine appropriate locations for centers and the areas to be served by home-based programs; and

(6) Set criteria that define the types of children and families who will be given priority for recruitment and selection.

(d) In each of the two years following completion of the community needs assessment, the grantee must conduct a review to determine whether there have been significant changes in the information described in paragraph (b) of this section. If so, the community needs assessment must be updated and the decisions described in paragraph (c) of this section must be reconsidered.

(e) The recruitment area must include the entire service area, unless the resources available to the Head Start grantee are inadequate to serve the entire service area.

(f) In determining the recruitment area when it does not include the entire service area, the grantee must:

(1) Select an area or areas that are among those having the greatest need for Head Start services as determined by the community needs assessment; and

(2) Include as many Head Start eligible children as possible within the recruitment area, so that:

(i) The greatest number of Head Start eligible children can be recruited

and have an opportunity to be considered for selection and enrollment in the Head Start program, and

(ii), the Head Start program can enroll the children and families with the greatest need for its services.

§1305.4 Age of children and family income eligibility.

(a) To be eligible for Head Start services, a child must be at least three years old by the date used to determine eligibility for public school in the community in which the Head Start program is located, except in cases where the Head Start program's approved grant provides specific authority to serve younger children. Examples of such exceptions are programs serving children of migrant families and Parent and Child Center programs.

(b) At least 90 percent of the children who are enrolled in each Head Start program must be from low-income families. Up to ten percent of the children who are enrolled may be children from families that exceed the low-income guidelines but who meet criteria the program has established for selecting such children and who would benefit from Head Start services.

(c) The family income must be verified by the Head Start program before determining that a child is eligible to participate in the program.

(d) Verification must include examination of any of the following: Individual Income Tax Form 1040, W–2 forms, pay stubs, pay envelopes, written statements from employers, or documentation showing current status as recipients of public assistance.

(e) A signed statement by an employee of the Head Start program, identifying which of these documents was examined and stating that the child is eligible to participate in the program, must be maintained to indicate that income verification has been made.

§1305.5 Recruitment of children.

(a) In order to reach those most in need of Head Start services, each Head Start grantee and delegate agency must develop and implement a recruitment process that is designed to actively inform all families with Head Start eligible children within the recruitment area of the availability of services and encourage them to apply for admission to the program. This process may include canvassing the local community, use of news releases and advertising, and use of family referrals and referrals from other public and private agencies.

(b) During the recruitment process that occurs prior to the beginning of the enrollment year, a Head Start program must solicit applications from as many Head Start eligible families within the recruitment area as possible. If necessary, the program must assist families in filling out the application form in order to assure that all information needed for selection is completed.

(c) Each program, except migrant programs, must obtain a number of applications during the recruitment process that occurs prior to the beginning of the enrollment year that is greater than the enrollment opportunities that are anticipated to be available over the course of the next enrollment year in order to select those with the greatest need for Head Start services.

§1305.6 Selection process.

(a) Each Head Start program must have a formal process for establishing selection criteria and for selecting children and families that considers all eligible applicants for Head Start services. The selection criteria must be based on those contained in paragraphs (b) and (c) of this section.

(b) In selecting the children and families to be served, the Head Start program must consider the income of eligible families, the age of the child, the availability of kindergarten or first grade to the child, and the extent to which a child or family meets the criteria that each program is required to establish in §1305.3(c)(6).

(c) At least 10 percent of the total number of enrollment opportunities in each grantee and each delegate agency during an enrollment year must be made available to children with disabilities who meet the definition for children with disabilities in §1305.2(a). An exception to this requirement will be granted only if the responsible HHS

official determines, based on such supporting evidence as he or she may require, that the grantee made a reasonable effort to comply with this requirement but was unable to do so because there was an insufficient number of children with disabilities in the recruitment area who wished to attend the program and for whom the program was an appropriate placement based on their Individual Education Plans (IEP), with services provided directly by Head Start or in conjunction with other providers.

(d) Each Head Start program must develop at the beginning of each enrollment year and maintain during the year a waiting list that ranks children according to the program's selection criteria to assure that eligible children enter the program as vacancies occur.

§ 1305.7 Enrollment and re-enrollment.

(a) Each child enrolled in a Head Start program, except those enrolled in a migrant program, must be allowed to remain in Head Start until kindergarten or first grade is available for the child in the child's community, except that the Head Start program may choose not to enroll a child when there are compelling reasons for the child not to remain in Head Start, such as when there is a change in the child's family income and there is a child with a greater need for Head Start services.

(b) A Head Start grantee must maintain its funded enrollment level. When a program determines that a vacancy exists, no more than 30 calendar days may elapse before the vacancy is filled. A program may elect not to fill a vacancy when 60 calendar days or less remain in the program's enrollment year.

(c) If a child has been found income eligible and is participating in a Head Start program, he or she remains income eligible through that enrollment year and the immediately succeeding enrollment year.

§ 1305.8 Attendance.

(a) When the monthly average daily attendance rate in a center-based program falls below 85 percent, a Head Start program must analyze the causes of absenteeism. The analysis must include a study of the pattern of absences for each child, including the reasons for absences as well as the number of absences that occur on consecutive days.

(b) If the absences are a result of illness or if they are well documented absences for other reasons, no special action is required. If, however, the absences result from other factors, including temporary family problems that affect a child's regular attendance, the program must initiate appropriate family support procedures for all children with four or more consecutive unexcused absences. These procedures must include home visits or other direct contact with the child's parents. Contacts with the family must emphasize the benefits of regular attendance, while at the same time remaining sensitive to any special family circumstances influencing attendance patterns. All contacts with the child's family as well as special family support service activities provided by program staff must be documented.

(c) In circumstances where chronic absenteeism persists and it does not seem feasible to include the child in either the same or a different program option, the child's slot must be considered an enrollment vacancy.

§ 1305.9 Policy on fees.

A Head Start program must not prescribe any fee schedule or otherwise provide for the charging of any fees for participation in the program. If the family of a child determined to be eligible for participation by a Head Start program volunteers to pay part or all of the costs of the child's participation, the Head Start program may accept the voluntary payments and record the payments as program income.

Under no circumstances shall a Head Start program solicit, encourage, or in any other way condition a child's enrollment or participation in the program upon the payment of a fee.

§ 1305.10 Compliance.

A grantee's failure to comply with the requirements of this Part may result in a denial of refunding or termination in accordance with 45 CFR part 1303.

PART 1306—HEAD START STAFFING REQUIREMENTS AND PROGRAM OPTIONS

SUBPART A—GENERAL

SUBPART B—HEAD START PROGRAM STAFFING REQUIREMENTS.

SUBPART C—HEAD START PROGRAM OPTIONS

AUTHORITY: 42 U.S.C. 9831 *et seq.*

SOURCE: 57 FR 58092, Dec. 8, 1992, unless otherwise noted.

SUBPART A—GENERAL

§1306.1 Purpose and scope.

This part sets forth requirements for Head Start program staffing and program options that all Head Start grantees, with the exception of the Parent Child Center programs, are required to meet. These requirements, including those pertaining to staffing patterns, the choice of the program options to be implemented and the acceptable ranges in the implementation of those options, have been developed to help maintain and improve the quality of Head Start and to help promote lasting benefits to the children and families being served.

§1306.2 Effective dates.

(a) Except as provided in paragraph (b) of this section, Head Start grantees funded or refunded after June 7, 1993, must comply with these requirements by such times in their grant cycles as new groups of children begin receiving services. This does not preclude grantees from voluntarily coming into compliance with these regulations prior to the effective date.

(b) With respect to the requirements of §1306.32(b)(2), grantees that are currently operating classes in double session center-based options for less than three and a half hours per day, but for at least three hours per day, may continue to do so until September 1, 1995, at which time they must comply with the three and one-half hour minimum class time requirement.

§1306.3 Definitions.

(a) *Center-based program option* means Head Start services provided to children primarily in classroom settings.

(b) *Combination program option* means Head Start services provided to children in both a center setting and through intensive work with the child's parents and family at home.

(c) *Days of operation* means the planned days during which children will be receiving direct Head Start component services in a classroom, on a field trip or on trips for health-related activities, in group socialization or when parents are receiving a home visit.

(d) *Double session variation* means a variation of the center-based program option that operates with one teacher who works with one group of children in a morning session and a different group of children in an afternoon session.

(e) *Full-day variation* means a variation of the center-based program option in which program operations continue for longer than six hours per day.

(f) *Group socialization activities* means the sessions in which children and parents enrolled in the home-based or combination program option interact with other home-based or combination children and parents in a Head Start classroom, community facility, home, or on a field trip.

(g) *Head Start class* means a group of children supervised and taught by two paid staff members (a teacher and a teacher aide or two teachers) and, where possible, a volunteer.

(h) *Head Start parent* means a Head Start child's mother or father, other family member who is a primary caregiver, foster parent, guardian or the person with whom the child has

been placed for purposes of adoption pending a final adoption decree.

(i) *Head Start program* is one operated by a Head Start grantee or delegate agency.

(j) *Home-based program option* means Head Start services provided to children, primarily in the child's home, through intensive work with the child's parents and family as the primary factor in the growth and development of the child.

(k) *Home visits* means the visits made to a child's home by the class teacher in a center-based program option, or home visitors in a home-based program option, for the purpose of assisting parents in fostering the growth and development of their child.

(l) *Hours of operation* means the planned hours per day during which children and families will be receiving direct Head Start component services in a classroom, on a field trip, while receiving medical or dental services, or during a home visit or group socialization activity. Hours of operation do not include travel time to and from the center at the beginning and end of a session.

(m) *Parent-teacher conference* means the meeting held at the Head Start center between the child's teacher and the child's parents during which the child's progress and accomplishments are discussed.

SUBPART B—HEAD START PROGRAM STAFFING REQUIREMENTS

§ 1306.20 Program staffing patterns.

(a) Grantees must provide adequate supervision of their staff.

(b) Grantees operating center-based program options must employ two paid staff persons (a teacher and a teacher aide or two teachers) for each class. Whenever possible, there should be a third person in the classroom who is a volunteer.

(c) Grantees operating home-based program options must employ home visitors responsible for home visits and group socialization activities.

(d) Grantees operating a combination program option must employ, for their classroom operations, two paid staff persons, a teacher and a teacher aide or two teachers, for each class. Whenever possible, there should be a third person in the classroom who is a volunteer. They must employ staff for home visits who meet the qualifications the grantee requires for home visitors.

(e) Classroom staff and home visitors must be able to communicate with the families they serve either directly or through a translator. They should also be familiar with the ethnic background of these families.

§ 1306.21 Staff qualification requirements.

Head Start programs must comply with section 648 of the Head Start Act and any subsequent amendments, regarding the qualifications of classroom teachers.

§ 1306.22 Volunteers.

(a) Head Start programs must use volunteers to the fullest extent possible. Head Start grantees must develop and implement a system to actively recruit, train and utilize volunteers in the program.

(b) Special efforts must be made to have volunteer participation, especially parents, in the classroom and during group socialization activities.

§ 1306.23 Training.

(a) Head Start grantees must provide pre-service training and in-service training opportunities to program staff and volunteers to assist them in acquiring or increasing the knowledge and skills they need to fulfill their job responsibilities. This training must be directed toward improving the ability of staff and volunteers to deliver services required by Head Start regulations and policies.

(b) Head Start grantees must provide staff with information and training about the underlying philosophy and goals of Head Start and the program options being implemented.

SUBPART C—HEAD START PROGRAM OPTIONS

§ 1306.30 Provisions of comprehensive child development services.

(a) All Head Start grantees must provide comprehensive child development services, as defined in the Head Start Performance Standards.

(b) All Head Start grantees must provide classroom or group socialization activities for the child as well as home visits to the parents. The major purpose of the classroom or socialization activities is to help meet the child's development needs and to foster the child's social competence. The major purpose of the home visits is to enhance the parental role in the growth and development of the child.

(c) The facilities used by Head Start grantees for regularly scheduled center-based and combination program option classroom activities or home-based socialization activities must comply with State and local requirements concerning licensing. In cases where these licensing standards are less comprehensive or less stringent than Head Start regulations, or where no State or local licensing standards are applicable, grantees are, at a minimum, required to assure that their facilities are in compliance with Head Start Performance Standards related to health and safety found in 45 CFR 1304.2–3.

(d) All grantees must identify, secure and use community resources in the provision of services to Head Start children and their families prior to using Head Start funds for these services.

§ 1306.31 Choosing a Head Start program option.

(a) Grantees may choose to implement one or more than one of three program options: a center-based option, a home-based program option or a combination program option.

(b) The program option chosen must meet the needs of the children and families as indicated by the community needs assessment conducted by the grantee.

(c) When assigning children to a particular program option, Head Start grantees that operate more than one program option must consider such factors as the child's age, developmental level, disabilities, health or learning problems, previous preschool experiences and family situation. Grantees must also consider parents' concerns and wishes prior to making final assignments.

§ 1306.32 Center-based program option.

(a) *Class size.* (1) Head Start classes must be staffed by a teacher and an aide or two teachers and, whenever possible, a volunteer.

(2) Grantees must determine their class size based on the predominant age of the children who will participate in the class and whether or not a center-based double session variation is being implemented.

(3) For classes serving predominantly four or five-year-old children, the average class size of that group of classes must be between 17 and 20 children, with no more than 20 children enrolled in any one class.

(4) When double session classes serve predominantly four or five-year-old-children, the average class size of that group of classes must be between 15 and 17 children. A double session class for four or five-year old children may have no more than 17 children enrolled. (See paragraph (c) of this section for other requirements regarding the double session variation.)

(5) For classes serving predominantly three-year-old children, the average class size of that group of classes must be between 15 and 17 children, with no more than 17 children enrolled in any one class.

(6) When double session classes serve predominantly three-year-old children, the average class size of that group of classes must be between 13 and 15 children. A double session class for three-year-old children may have no more than 15 children enrolled. (See paragraph (c) of this section for other requirements regarding the double session variation.)

(7) It is recommended that at least 13 children be enrolled in each center-based option class where feasible.

(8) A class is considered to serve predominantly four- or five-year-old children if more than half of the children in the class will be four or five years old by whatever date is used by the State or local jurisdiction in which the Head Start program is located to determine eligibility for public school.

(9) A class is considered to serve predominantly three-year-old children if more than half of the children in the

class will be three years old by whatever date is used by the State or local jurisdiction in which Head Start is located to determine eligibility for public school.

(10) Head Start grantees must determine the predominant age of children in the class at the start of the year. There is no need to change that determination during the year.

(11) In some cases, State or local licensing requirements may be more stringent than these class requirements, preventing the required minimum numbers of children from being enrolled in the facility used by Head Start. Where this is the case, Head Start grantees must try to find alternative facilities that satisfy licensing requirements for the numbers of children cited above. If no alternative facilities are available, the responsible HHS official has the discretion to approve enrollment of fewer children than required above.

(12) The chart below may be used for easy reference:

Predominant age of children in the class	Funded class size [Funded enrollment]
4 and 5 year olds	Program average of 17–20 children enrolled per class in these classes. No more than 20 children enrolled in any class.
4 and 5 year olds in double session classes.	Program average of 15–17 children enrolled per class in these classes. No more than 17 children enrolled in any class.
3 year olds	Program average of 15–17 children enrolled per class in these classes. No more than 17 children enrolled in any class.
3 year olds in double session classes.	Program average of 13–15 children enrolled per class in these classes. No more than 15 children enrolled in any class.

(b) *Center-based program option requirements.* (1) Classes must operate for four or five days per week or some combination of four and five days per week.

(2) Classes must operate for a minimum of three and one-half to a maximum of six hours per day with four hours being optimal.

(3) The annual number of required days of planned class operations (days when children are scheduled to attend) is determined by the number of days per week each program operates. Programs that operate for four days per week must provide at least 128 days per year of planned class operations. Programs that operate for five days per week must provide at least 160 days per year of planned class operations. Grantees implementing a combination of four and five days per week must plan to operate between 128 and 160 days per year. The minimum number of planned days of service per year can be determined by computing the relative number of four and five day weeks that the program is in operation. All center-based program options must provide a minimum of 32 weeks of scheduled days of class operations over an eight or nine month period. Every effort should be made to schedule makeup classes using existing resources if planned class days fall below the number required per year.

(4) Programs must make a reasonable estimate of the number of days during a year that classes may be closed due to problems such as inclement weather or illness, based on their experience in previous years. Grantees must make provisions in their budgets and program plans to operate makeup classes and provide these classes, when needed, to prevent the number of days of service available to the children from falling below 128 days per year.

(5) Each individual child is not required to receive the minimum days of service, although this is to be encouraged in accordance with Head Start policies regarding attendance. The minimum number of days also does not apply to children with disabilities whose individualized education plan may require fewer planned days of service in the Head Start program.

(6) Head Start grantees operating migrant programs are not subject to the requirement for a minimum number of planned days, but must make every effort to provide as many days of service as possible to each migrant child and family.

(7) Staff must be employed for sufficient time to allow them to participate in pre-service training, to plan and set up the program at the start of the year, to close the program at the end of the

year, to conduct home visits, to conduct health examinations, screening and immunization activities, to maintain records, and to keep service component plans and activities current and relevant. These activities should take place outside of the time scheduled for classes in center-based programs or home visits in home-based programs.

(8) Head Start grantees must develop and implement a system that actively encourages parents to participate in two home visits annually for each child enrolled in a center-based program option. These visits must be initiated and carried out by the child's teacher. The child may not be dropped from the program if the parents will not participate in the visits.

(9) Head Start grantees operating migrant programs are required to plan for a minimum of two parent-teacher conferences for each child during the time they serve that child. Should time and circumstance allow, migrant programs must make every effort to conduct home visits.

(c) *Double session variation.* (1) A center-based option with a double session variation employs a single teacher to work with one group of children in the morning and a different group of children in the afternoon. Because of the larger number of children and families to whom the teacher must provide services, double session program options must comply with the requirements regarding class size explained in paragraph (a) of this section and with all other center-based requirements in paragraph (b) of this section with the exceptions and additions noted in paragraphs (c) (2) and (3) of this section.

(2) Each program must operate classes for four days per week.

(3) Each double session classroom staff member must be provided adequate break time during the course of the day. In addition, teachers, aides and volunteers must have appropriate time to prepare for each session together, to set up the classroom environment and to give individual attention to children entering and leaving the center.

(d) *Full day variation.* (1) A Head Start grantee implementing a center-based program option may operate a full day variation and provide more than six hours of class operations per day using Head Start funds. These programs must comply with all the requirements regarding the center-based program option found in paragraphs (a) and (b) of this section with the exception of paragraph (b)(2) regarding the hours of service per day.

(2) Programs are encouraged to meet the needs of Head Start families for full day services by securing funds from other agencies. Before implementing a full day variation of a center-based option, a Head Start grantee should demonstrate that alternative enrollment opportunities or funding from non-Head Start sources are not available for Head Start families needing full-day child care services.

(3) Head Start grantees may provide full day services only to those children and families with special needs that justify full day services or to those children whose parents are employed or in job training with no caregiver present in the home. The records of each child receiving services for more than six hours per day must show how each child meets the criteria stated above.

(e) Non-Head Start services. Grantees may charge for services which are provided outside the hours of the Head Start program.

§ 1306.33 Home-based program option.

(a) Grantees implementing a home-based program option must:

(1) Provide one home visit per week per family (a minimum of 32 home visits per year) lasting for a minimum of 1 and ½ hours each.

(2) Provide, at a minimum, two group socialization activities per month for each child (a minimum of 16 group socialization activities each year).

(3) Make up planned home visits or scheduled group socialization activities that were canceled by the grantee or by program staff when this is necessary to meet the minimums stated above. Medical or social service appointments may not replace home visits or scheduled group socialization activities.

(4) Allow staff sufficient employed time to participate in pre-service training, to plan and set up the program at the start of the year, to close the program at the end of the year, to

maintain records, and to keep component and activities plans current and relevant. These activities should take place when no home visits or group socialization activities are planned.

(5) Maintain an average caseload of 10 to 12 families per home visitor with a maximum of 12 families for any individual home visitor.

(b) Home visits must be conducted by trained home visitors with the content of the visit jointly planned by the home visitor and the parents. Home visitors must conduct the home visit with the participation of parents. Home visits may not be conducted by the home visitor with only babysitters or other temporary caregivers in attendance.

(1) The purpose of the home visit is to help parents improve their parenting skills and to assist them in the use of the home as the child's primary learning environment. The home visitor must work with parents to help them provide learning opportunities that enhance their child's growth and development.

(2) Home visits must, over the course of a month, contain elements of all Head Start program components. The home visitor is the person responsible for introducing, arranging and/or providing Head Start services.

(c) Group socialization activities must be focused on both the children and parents. They may not be conducted by the home visitor with babysitters or other temporary caregivers.

(1) The purpose of these socialization activities for the children is to emphasize peer group interaction through age appropriate activities in a Head Start classroom, community facility, home, or on a field trip. The children are to be supervised by the home visitor with parents observing at times and actively participating at other times.

(2) These activities must be designed so that parents are expected to accompany their children to the group socialization activities at least twice each month to observe, to participate as volunteers or to engage in activities designed specifically for the parents.

(3) Grantees must follow the nutrition requirements specified in 45 CFR 1304.3–10(b)(1) and provide appropriate snacks and meals to the children during group socialization activities.

§ 1306.34 Combination program option.

(a) *Combination program option requirements*: (1) Grantees implementing a combination program option must provide class sessions and home visits that result in an amount of contact with children and families that is, at a minimum, equivalent to the services provided through the center-based program option or the home-based program option.

(2) Acceptable combinations of minimum number of class sessions and corresponding number of home visits are shown below. Combination programs must provide these services over a period of 8 to 12 months.

Number of class sessions	Number of home visits
96	8
92–95	9
88–91	10
84–87	11
80–83	12
76–79	13
72–75	14
68–71	15
64–67	16
60–63	17
56–59	18
52–55	19
48–51	20
44–47	21
40–43	22
36–39	23
32–35	24

(3) The following are examples of various configurations that are possible for a program that operates for 32 weeks:

- A program operating classes three days a week and providing one home visit a month (96 classes and 8 home visits a year);
- A program operating classes two days a week and providing two home visits a month (64 classes and 16 home visits a year);
- A program operating classes one day a week and providing three home visits a month (32 classes and 24 home visits a year).

(4) Grantees operating the combination program option must make a reasonable estimate of the number of days during a year that centers may be closed due to problems such as inclement weather or illness, based on their experience in previous years. Grantees must make provisions in their budgets and program plans to operate make-up

classes up to the estimated number, and provide these classes, when necessary, to prevent the number of days of classes from falling below the number required by paragraph (a)(2) of this section. Grantees must make up planned home visits that were canceled by the program or by the program staff if this is necessary to meet the minimums required by paragraph (a)(2) of this section. Medical or social service appointments may not replace home visits.

(b) *Requirements for class sessions:* (1) Grantees implementing the combination program option must comply with the class size requirements contained in § 1306.32(a).

(2) The provisions of the following sections apply to grantees operating the combination program option: § 1306.32(b) (2), (5), (6), (7) and (9).

(3) If a grantee operates a double session or a full day variation, it must meet the provisions concerning double-sessions contained in § 1306.32(c)(1) and (3) and the provisions for the center-based program option's full day variation found in § 1306.32(d).

(c) *Requirements for home visits:* (1) Home visits must last for a minimum of 1 and ½ hours each.

(2) The provisions of the following section, concerning the home-based program option, must be adhered to by grantees implementing the combination program option: § 1306.33(a) (4) and (5); and § 1306.33(b).

§ 1306.35 Additional Head Start program option variations.

In addition to the center-based, home-based and combination program options defined above, the Commissioner of the Administration on Children, Youth and Families retains the right to fund alternative program variations to meet the unique needs of communities or to demonstrate or test alternative approaches for providing Head Start services.

§ 1306.36 Compliance waiver.

An exception to one or more of the requirements contained in §§ 1306.32 through 1306.34 of subpart C will be granted only if the Commissioner of the Administration on Children, Youth and Families determines, on the basis of supporting evidence, that the grantee made a reasonable effort to comply with the requirement but was unable to do so because of limitations or circumstances with a specific community or communities served by the grantee.

PART 1308—HEAD START PROGRAM PERFORMANCE STANDARDS ON SERVICES FOR CHILDREN WITH DISABILITIES

Subpart A—General

Subpart B—Disabilities Service Plan

Subpart C—Social Services Performance Standards

Subpart D—Health Services Performance Standards

Subpart E—Education Services Performance Standards

AUTHORITY: 42 U.S.C. 9801 *et seq.*

SOURCE: 58 FR 5501, Jan. 21, 1993, unless otherwise noted.

Subpart A—General

§ 1308.1 Purpose.

This rule sets forth the requirements for providing special services for 3- through 5-year-old children with disabilities enrolled in Head Start programs. These requirements are to be used in conjunction with the Head Start Program Performance Standards at 45 CFR part 1304. The purpose of this part is to ensure that children with disabilities enrolled in Head Start programs receive all the services to which they are entitled under the Head Start Program Performance Standards at 45 CFR part 1304, as amended.

§ 1308.2 Scope.

This rule applies to all Head Start grantees and delegate agencies.

§ 1308.3 Definitions.

As used in this part:

(a) The term *ACYF* means the Administration on Children, Youth and Families, Administration for Children and Families, U.S. Department of Health and Human Services, and includes appropriate Regional Office staff.

(b) The term *children with disabilities* means children with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments or specific learning disabilities; and who, by reason thereof, need special education and related services. The term *children with disabilities* for children aged 3 to 5, inclusive, may, at a State's discretion, include children experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, need special education and related services.

(c) The term *Commissioner* means the Commissioner of the Administration on Children, Youth and Families.

(d) The term *day* means a calendar day.

(e) The term *delegate agency* means a public or private non-profit agency to which a grantee has delegated the responsibility for operating all or part of its Head Start program.

(f) The term *disabilities coordinator* means the person on the Head Start staff designated to manage on a full or part-time basis the services for children with disabilities described in part 1308.

(g) The term *eligibility criteria* means the criteria for determining that a child enrolled in Head Start requires special education and related services because of a disability.

(h) The term *grantee* means the public or private non-profit agency which has been granted financial assistance by ACYF to administer a Head Start program.

(i) The term *individualized education program* (IEP) means a written statement for a child with disabilities, developed by the public agency responsible for providing free appropriate public education to a child, and contains the special education and related services to be provided to an individual child.

(j) The term *least restrictive environment* means an environment in which services to children with disabilities are provided:

(1) to the maximum extent appropriate, with children who are not disabled and in which;

(2) special classes or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the

disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(k) The term *Performance Standards* means the Head Start program functions, activities and facilities required and necessary to meet the objectives and goals of the Head Start program as they relate directly to children and their families.

(l) The term *related services* means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services, and parent counseling and training. It includes other developmental, corrective or supportive services if they are required to assist a child with a disability to benefit from special education, including assistive technology services and devices.

(1) The term *assistive technology device* means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

(2) The term *assistive technology service* means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. The term includes: The evaluation of the needs of an individual with a disability; purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices; coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs; training or technical assistance for an individual with disabilities, or, where appropriate, the family of an individual with disabilities; and training or technical assistance to professionals who employ or provide services involved in the major life functions of individuals with disabilities.

(m) The term *responsible HHS official* means the official who is authorized to make the grant of assistance in question or his or her designee.

(n) The term *special education* means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a child with a disability. These services include classroom or home-based instruction, instruction in hospitals and institutions, and specially designed physical education if necessary.

Subpart B—Disabilities Service Plan

§1308.4 Purpose and scope of disabilities service plan.

(a) A Head Start grantee, or delegate agency, if appropriate, must develop a disabilities service plan providing strategies for meeting the special needs of children with disabilities and their parents. The purposes of this plan are to assure:

(1) That all components of Head Start are appropriately involved in the integration of children with disabilities and their parents; and

(2) That resources are used efficiently.

(b) The plan must be updated annually.

(c) The plan must include provisions for children with disabilities to be included in the full range of activities and services normally provided to all Head Start children and provisions for any modifications necessary to meet the special needs of the children with disabilities.

(d) The Head Start grantee and delegate agency must use the disabilities service plan as a working document which guides all aspects of the agency's effort to serve children with disabilities. This plan must take into account the needs of the children for small group activities, for modifications of

large group activities and for any individual special help.

(e) The grantee or delegate agency must designate a coordinator of services for children with disabilities (disabilities coordinator) and arrange for preparation of the disabilities service plan and of the grantee application budget line items for services for children with disabilities. The grantee or delegate must ensure that all relevant coordinators, other staff and parents are consulted.

(f) The disability service plan must contain:

(1) Procedures for timely screening;

(2) Procedures for making referrals to the LEA for evaluation to determine whether there is a need for special education and related services for a child, as early as the child's third birthday;

(3) Assurances of accessibility of facilities; and

(4) Plans to provide appropriate special furniture, equipment and materials if needed.

(g) The plan, when appropriate, must address strategies for the transition of children into Head Start from infant/toddler programs (0–3 years), as well as the transition from Head Start into the next placement. The plan must include preparation of staff and parents for the entry of children with severe disabilities into the Head Start program.

(h) The grantee or delegate agency must arrange or provide special education and related services necessary to foster the maximum development of each child's potential and to facilitate participation in the regular Head Start program unless the services are being provided by the LEA or other agency. The plan must specify the services to be provided directly by Head Start and those provided by other agencies. The grantee or delegate agency must arrange for, provide, or procure services which may include, but are not limited to special education and these related services:

(1) Audiology services, including identification of children with hearing loss and referral for medical or other professional attention; provision of needed rehabilitative services such as speech and language therapy and auditory training to make best use of remaining hearing; speech conservation; lip reading; determination of need for hearing aids and fitting of appropriate aids; and programs for prevention of hearing loss;

(2) Physical therapy to facilitate gross motor development in activities such as walking prevent or slow orthopedic problems and improve posture and conditioning;

(3) Occupational therapy to improve, develop or restore fine motor functions in activities such as using a fork or knife;

(4) Speech or language services including therapy and use of assistive devices necessary for a child to develop or improve receptive or expressive means of communication;

(5) Psychological services such as evaluation of each child's functioning and interpreting the results to staff and parents; and counseling and guidance services for staff and parents regarding disabilities;

(6) Transportation for children with disabilities to and from the program and to special clinics or other service providers when the services cannot be provided on-site. Transportation includes adapted buses equipped to accommodate wheelchairs or other such devices if required; and

(7) Assistive technology services or devices necessary to enable a child to improve functions such as vision, mobility or communication to meet the objectives in the IEP.

(i) The disabilities service plan must include options to meet the needs and take into consideration the strengths of each child based upon the IEP so that a continuum of services available from various agencies is considered.

(j) The options may include:

(1) Joint placement of children with other agencies;

(2) Shared provision of services with other agencies;

(3) Shared personnel to supervise special education services, when necessary to meet State requirements on qualifications;

(4) Administrative accommodations such as having two children share one enrollment slot when each child's IEP calls for part-time service because of their individual needs; and

(5) Any other strategies to be used to insure that special needs are met. These may include:

(i) Increased staff;

(ii) Use of volunteers; and

(iii) Use of supervised students in such fields as child development, special education, child psychology, various therapies and family services to assist the staff.

(k) The grantee must ensure that the disabilities service plan addresses grantee efforts to meet State standards for personnel serving children with disabilities by the 1994–95 program year. Special education and related services must be provided by or under the supervision of personnel meeting State qualifications by the 1994–95 program year.

(l) The disabilities service plan must include commitment to specific efforts to develop interagency agreements with the LEAs and other agencies within the grantee's service area. If no agreement can be reached, the grantee must document its efforts and inform the Regional Office. The agreements must address:

(1) Head Start participation in the public agency's Child Find plan under Part B of IDEA;

(2) Joint training of staff and parents;

(3) Procedures for referral for evaluations, IEP meetings and placement decisions;

(4) Transition;

(5) Resource sharing;

(6) Head Start commitment to provide the number of children receiving services under IEPs to the LEA for the LEA Child Count report by December 1 annually; and

(7) Any other items agreed to by both parties. Grantees must make efforts to update the agreements annually.

(m) The disabilities coordinator must work with the director in planning and budgeting of grantee funds to assure that the special needs identified in the IEP are fully met; that children most in need of an integrated placement and of special assistance are served; and that the grantee maintains the level of fiscal support to children with disabilities consistent with the Congressional mandate to meet their special needs.

(n) The grant application budget form and supplement submitted with applications for funding must reflect requests for adequate resources to implement the objectives and activities in the disability services plan and fulfill the requirements of these Performance Standards.

(o) The budget request included with the application for funding must address the implementation of the disabilities service plan. Allowable expenditures include:

(1) *Salaries.* Allowable expenditures include salaries of a full or part-time coordinator of services for children with disabilities (disabilities coordinator), who is essential to assure that programs have the core capability to recruit, enroll, arrange for the evaluation of children, provide or arrange for services to children with disabilities and work with Head Start coordinators and staff of other agencies which are working cooperatively with the grantee. Salaries of special education resource teachers who can augment the work of the regular teacher are an allowable expenditure.

(2) *Evaluation of children.* When warranted by screening or rescreening results, teacher observation or parent request, arrangements must be made for evaluation of the child's development and functioning. If, after referral for evaluation to the LEA, evaluations are not provided by the LEA, they are an allowable expenditure.

(3) *Services.* Program funds may be used to pay for services which include special education, related services, and summer services deemed necessary on an individual basis and to prepare for serving children with disabilities in advance of the program year.

(4) *Making services accessible.* Allowable costs include elimination of architectural barriers which affect the participation of children with disabilities, in conformance with 45 CFR part 84, Nondiscrimination on the Basis of Handicap in Program and Activities Receiving or Benefiting from Federal Financial Assistance and with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101). The Americans with Disabilities Act requires that public accommodations including private schools and day care centers may not

discriminate on the basis of disability. Physical barriers in existing facilities must be removed if removal is readily achievable (i.e., easily accomplishable and able to be carried out without much difficulty or expense). If not, alternative methods of providing the services must be offered, if those methods are readily achievable. Alterations must be accessible. When alterations to primary function areas are made, an accessible path of travel to the altered areas (and the bathrooms, telephones and drinking fountains serving that area) must be provided to the extent that the added accessibility costs are not disproportionate to the overall cost of the alterations. Program funds may be used for ramps, remodeling or modifications such as grab bars or railings. Grantees must meet new statutory and regulatory requirements that are enacted.

(5) *Transportation.* Transportation is a related service to be provided to children with disabilities. When transportation to the program site and to special services can be accessed from other agencies, it should be used. When it is not available, program funds are to be used to provide it. Special buses or use of taxis are allowable expenses if there are no alternatives available and they are necessary to enable a child to be served.

(6) *Special Equipment and Materials.* Purchase or lease of special equipment and materials for use in the program and home is an allowable program expense. Grantees must make available assistive devices necessary to make it possible for a child to move, communicate, improve functioning or address objectives which are listed in the child's IEP.

(7) *Training and Technical Assistance.* Increasing the abilities of staff to meet the special needs of children with disabilities is an allowable expense. Appropriate expenditures may include but are not limited to:

(i) Travel and per diem expenses for disabilities coordinators, teachers and parents to attend training and technical assistance events related to special services for children with disabilities;

(ii) The provision of substitute teaching staff to enable staff to attend training and technical assistance events;

(iii) Fees for courses specifically related to the requirements of the disabilities service plan, a child's IEP or State certification to serve children with disabilities; and

(iv) Fees and expenses for training/technical assistance consultants if such help is not available from another provider at no cost.

Subpart C—Social Services Performance Standards

§ 1308.5 Recruitment and enrollment of children with disabilities.

(a) The grantee or delegate agency outreach and recruitment activities must incorporate specific actions to actively locate and recruit children with disabilities.

(b) A grantee must insure that staff engaged in recruitment and enrollment of children are knowledgable about the provisions of 45 CFR part 84, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, and of the Americans with Disabilities Act of 1990, (42 U.S.C. 12101).

(c) A grantee must not deny placement on the basis of a disability or its severity to any child when:

(1) The parents wish to enroll the child,

(2) The child meets the Head Start age and income eligibility criteria,

(3) Head Start is an appropriate placement according to the child's IEP, and

(4) The program has space to enroll more children, even though the program has made ten percent of its enrollment opportunities available to children with disabilities. In that case children who have a disability and nondisabled children would compete for the available enrollment opportunities.

(d) The grantee must access resources and plan for placement options, such as dual placement, use of resource staff and training so that a child with a disability for whom Head Start is an appropriate placement according to the IEP is not denied enrollment because of:

(1) Staff attitudes and/or apprehensions;
(2) Inaccessibility of facilities;
(3) Need to access additional resources to serve a specific child;
(4) Unfamiliarity with a disabling condition or special equipment, such as a prosthesis; and
(5) Need for personalized special services such as feeding, suctioning, and assistance with toileting, including catheterization, diapering, and toilet training.

(e) The same policies governing Head Start program eligibility for other children, such as priority for those most in need of the services, apply to children with disabilities. Grantees also must take the following factors into account when planning enrollment procedures:
(1) The number of children with disabilities in the Head Start service area including types of disabilities and their severity;
(2) The services and resources provided by other agencies; and
(3) State laws regarding immunization of preschool children. Grantees must observe applicable State laws which usually require that children entering State preschool programs complete immunizations prior to or within thirty days after entering to reduce the spread of communicable diseases.

(f) The recruitment effort of a Head Start grantee must include recruiting children who have severe disabilities, including children who have been previously identified as having disabilities.

Subpart D—Health Services Performance Standards

§ 1308.6 Assessment of children.

(a) The disabilities coordinator must be involved with other program staff throughout the full process of assessment of children, which has three steps:
(1) All children enrolled in Head Start are screened as the first step in the assessment process;
(2) Staff also carry out on-going developmental assessment for all enrolled children throughout the year to determine progress and to plan program activities;
(3) Only those children who need further specialized assessment to determine whether they have a disability and may require special education and related services proceed to the next step, evaluation. The disabilities coordinator has primary responsibility for this third step, evaluation, only.

(b) *Screening, the first step in the assessment process,* consists of standardized health screening and developmental screening which includes speech, hearing and vision. It is a brief process, which can be repeated, and is never used to determine that a child has a disability. It only indicates that a child may need further evaluation to determine whether the child has a disability. Rescreening must be provided as needed.
(1) Effective with the beginning of the 1993–94 program year, grantees must provide for the health and developmental screening of all Head Start children by 45 calendar days after the start of program services in the fall, or for children who enroll after program services have begun by 45 calendar days after the child enters the program. This does not preclude starting screening in the spring before program services begin in the fall.
(2) Grantees must make concerted efforts to reach and include the most in need and hardest to reach in the screening effort, providing assistance but urging parents to complete screening before the start of the program year.
(3) Developmental screening is a brief check to identify children who need further evaluation to determine whether they may have disabilities. It provides information in three major developmental areas: visual/motor, language and cognition, and gross motor/body awareness for use along with observation data, parent reports and home visit information. When appropriate standardized developmental screening instruments exist, they must be used. The disabilities coordinator must coordinate with the health coordinator and staff who have the responsibility for implementing health screening and with the education staff who have the responsibility for implementing developmental screening.

(c) Staff must inform parents of the types and purposes of the screening well in advance of the screening, the results of these screenings and the purposes and results of any subsequent evaluations.

(d) *Developmental assessment, the second step,* is the collection of information on each child's functioning in these areas: gross and fine motor skills, perceptual discrimination, cognition, attention skills, self-help, social and receptive skills and expressive language. The disabilities coordinator must coordinate with the education coordinator in the on-going assessment of each Head Start child's functioning in all developmental areas by including this developmental information in later diagnostic and program planning activities for children with disabilities.

(e) *The disabilities coordinator must arrange for further, formal, evaluation of a child who has been identified as possibly having a disability, the third step.* (1) The disabilities coordinator must refer a child to the LEA for evaluation as soon as the need is evident, starting as early as the child's third birthday.

(2) If the LEA does not evaluate the child, Head Start is responsible for arranging or providing for an evaluation, using its own resources and accessing others. In this case, the evaluation must meet the following requirements:

(i) Testing and evaluation procedures must be selected and administered so as not to be racially or culturally discriminatory, administered in the child's native language or mode of communication, unless it clearly is not feasible to do so.

(ii) Testing and evaluation procedures must be administered by trained (State certified or licensed) personnel.

(iii) No single procedure may be the sole criterion for determining an appropriate educational program for a child.

(iv) The evaluation must be made by a multidisciplinary team or group of persons including at least one teacher or specialist with knowledge in the area of suspected disability.

(v) Evaluators must use only assessment materials which have been validated for the specific purpose for which they are used.

(vi) Tests used with children with impaired sensory, manual or communication skills must be administered so that they reflect the children's aptitudes and achievement levels and not just the disabilities.

(vii) Tests and materials must assess all areas related to the suspected disability.

(viii) In the case of a child whose primary disability appears to be a speech or language impairment, the team must assure that enough tests are used to determine that the impairment is not a symptom of another disability and a speech or language pathologist should be involved in the evaluation.

(3) Parental consent in writing must be obtained before a child can have an initial evaluation to determine whether the child has a disability.

(4) Confidentiality must be maintained in accordance with grantee and State requirements. Parents must be given the opportunity to review their child's records in a timely manner and they must be notified and give permission if additional evaluations are proposed. Grantees must explain the purpose and results of the evaluation and make concerted efforts to help the parents understand them.

(5) The multidisciplinary team provides the results of the evaluation, and its professional opinion that the child does or does not need special education and related services, to the disabilities coordinator. If it is their professional opinion that a child has a disability, the team is to state which of the eligibility criteria applies and provide recommendations for programming, along with their findings. Only children whom the evaluation team determines need special education and related services may be counted as children with disabilities.

§ 1308.7 Eligibility criteria: Health impairment.

(a) A child is classified as health impaired who has limited strength, vitality or alertness due to a chronic or acute health problem which adversely affects learning.

(b) The health impairment classification may include, but is not limited to, cancer, some neurological disorders,

rheumatic fever, severe asthma, uncontrolled seizure disorders, heart conditions, lead poisoning, diabetes, AIDS, blood disorders, including hemophilia, sickle cell anemia, cystic fibrosis, heart disease and attention deficit disorder.

(c) This category includes medically fragile children such as ventilator dependent children who are in need of special education and related services.

(d) A child may be classified as having an attention deficit disorder under this category who has chronic and pervasive developmentally inappropriate inattention, hyperactivity, or impulsivity. To be considered a disorder, this behavior must affect the child's functioning severely. To avoid overuse of this category, grantees are cautioned to assure that only the enrolled children who most severely manifest this behavior must be classified in this category.

(1) The condition must severely affect the performance of a child who is trying to carry out a developmentally appropriate activity that requires orienting, focusing, or maintaining attention during classroom instructions and activities, planning and completing activities, following simple directions, organizing materials for play or other activities, or participating in group activities. It also may be manifested in overactivity or impulsive acts which appear to be or are interpreted as physical aggression. The disorder must manifest itself in at least two different settings, one of which must be the Head Start program site.

(2) Children must not be classified as having attention deficit disorders based on:

(i) Temporary problems in attention due to events such as a divorce, death of a family member or post-traumatic stress reactions to events such as sexual abuse or violence in the neighborhood;

(ii) Problems in attention which occur suddenly and acutely with psychiatric disorders such as depression, anxiety and schizophrenia;

(iii) Behaviors which may be caused by frustration stemming from inappropriate programming beyond the child's ability level or by developmentally inappropriate demands for long periods of inactive, passive activity;

(iv) Intentional noncompliance or opposition to reasonable requests that are typical of good preschool programs; or

(v) Inattention due to cultural or language differences.

(3) An attention deficit disorder must have had its onset in early childhood and have persisted through the course of child development when children normally mature and become able to operate in a socialized preschool environment. Because many children younger than four have difficulty orienting, maintaining and focussing attention and are highly active, when Head Start is responsible for the evaluation, attention deficit disorder applies to four and five year old children in Head Start but not to three year olds.

(4) Assessment procedures must include teacher reports which document the frequency and nature of indications of possible attention deficit disorders and describe the specific situations and events occurring just before the problems manifested themselves. Reports must indicate how the child's functioning was impaired and must be confirmed by independent information from a second observer.

§1308.8 Eligibility criteria: Emotional/behavioral disorders.

(a) An emotional/behavioral disorder is a condition in which a child's behavioral or emotional responses are so different from those of the generally accepted, age-appropriate norms of children with the same ethnic or cultural background as to result in significant impairment in social relationships, self-care, educational progress or classroom behavior. A child is classified as having an emotional/behavioral disorder who exhibits one or more of the following characteristics with such frequency, intensity, or duration as to require intervention:

(1) Seriously delayed social development including an inability to build or maintain satisfactory (age appropriate) interpersonal relationships with peers or adults (e.g., avoids playing with peers);

(2) Inappropriate behavior (e.g., dangerously aggressive towards others, self-destructive, severely withdrawn, non-communicative);

(3) A general pervasive mood of unhappiness or depression, or evidence of excessive anxiety or fears (e.g., frequent crying episodes, constant need for reassurance); or

(4) Has a professional diagnosis of serious emotional disturbance.

(b) The eligibility decision must be based on multiple sources of data, including assessment of the child's behavior or emotional functioning in multiple settings.

(c) The evaluation process must include a review of the child's regular Head Start physical examination to eliminate the possibility of misdiagnosis due to an underlying physical condition.

§ 1308.9 Eligiblity criteria: Speech or language impairments.

(a) A speech or language impairment means a communication disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's learning.

(b) A child is classified as having a speech or language impairment whose speech is unintelligible much of the time, or who has been professionally diagnosed as having speech impairments which require intervention or who is professionally diagnosed as having a delay in development in his or her primary language which requires intervention.

(c) A language disorder may be receptive or expressive. A language disorder may be characterized by difficulty in understanding and producing language, including word meanings (semantics), the components of words (morphology), the components of sentences (syntax), or the conventions of conversation (pragmatics).

(d) A speech disorder occurs in the production of speech sounds (articulation), the loudness, pitch or quality of voice (voicing), or the rhythm of speech (fluency).

(e) A child should not be classified as having a speech or language impairment whose speech or language differences may be attributed to:

(1) Cultural, ethnic, bilingual, or dialectical differences or being non-English speaking; or

(2) Disorders of a temporary nature due to conditions such as a dental problem; or

(3) Delays in developing the ability to articulate only the most difficult consonants or blends of sounds within the broad general range for the child's age.

§ 1308.10 Eligibility criteria: Mental retardation.

(a) A child is classified as mentally retarded who exhibits significantly sub-average intellectual functioning and exhibits deficits in adaptive behavior which adversely affect learning. Adaptive behavior refers to age-appropriate coping with the demands of the environment through independent skills in self-care, communication and play.

(b) Measurement of adaptive behavior must reflect objective documentation through the use of an established scale and appropriate behavioral/anecdotal records. An assessment of the child's functioning must also be made in settings outside the classroom.

(c) Valid and reliable instruments appropriate to the age range must be used. If they do not exist for the language and cultural group to which the child belongs, observation and professional judgement are to be used instead.

(d) Determination that a child is mentally retarded is never to be made on the basis of any one test alone.

§ 1308.11 Eligibility criteria: Hearing impairment including deafness.

(a) A child is classified as deaf if a hearing impairment exists which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, and learning is affected. A child is classified as hard of hearing who has a permanent or fluctuating hearing impairment which adversely affects learning; or

(b) Meets the legal criteria for being hard of hearing established by the State of residence; or

(c) Experiences recurrent temporary or fluctuating hearing loss caused by

otitis media, allergies, or eardrum perforations and other outer or middle ear anomalies over a period of three months or more. Problems associated with temporary or fluctuating hearing loss can include impaired listening skills, delayed language development, and articulation problems. Children meeting these criteria must be referred for medical care, have their hearing checked frequently, and receive speech, language or hearing services as indicated by the IEPs. As soon as special services are no longer needed, these children must no longer be classified as having a disability.

§ 1308.12 Eligibility criteria: Orthopedic impairment.

(a) A child is classified as having an orthopedic impairment if the condition is severe enough to adversely affect a child's learning. An orthopedic impairment involves muscles, bones, or joints and is characterized by impaired ability to maneuver in educational or non-educational settings, to perform fine or gross motor activities, or to perform self-help skills and by adversely affected educational performance.

(b) An orthopedic impairment includes, but is not limited to, spina bifida, cerebral palsy, loss of or deformed limbs, contractures caused by burns, arthritis, or muscular dystrophy.

§ 1308.13 Eligibility criteria: Visual impairment including blindness.

(a) A child is classified as visually impaired when visual impairment, with correction, adversely affects a child's learning. The term includes both blind and partially seeing children. A child is visually impaired if:

(1) The vision loss meets the definition of legal blindness in the State of residence; or

(2) Central acuity does not exceed 20/200 in the better eye with corrective lenses, or visual acuity is greater than 20/200, but is accompanied by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(b) A child is classified as having a visual impairment if central acuity with corrective lenses is between 20/70 and 20/200 in either eye, or if visual acuity is undetermined, but there is demonstrated loss of visual function that adversely affects the learning process, including faulty muscular action, limited field of vision, cataracts, etc.

§ 1308.14 Eligibility criteria: Learning disabilities.

(a) A child is classified as having a learning disability who has a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in imperfect ability to listen, think, speak or, for preschool age children, acquire the precursor skills for reading, writing, spelling or doing mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, and aphasia.

(b) An evaluation team may recommend that a child be classified as having a learning disability if:

(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in (a) above when provided with appropriate learning experiences for the age and ability; or

(2) The child has a severe discrepancy between achievement of developmental milestones and intellectual ability in one or more of these areas: oral expression, listening comprehension, pre-reading, pre-writing and pre-mathematics; or

(3) The child shows deficits in such abilities as memory, perceptual and perceptual-motor skills, thinking, language and non-verbal activities which are not due to visual, motor, hearing or emotional disabilities, mental retardation, cultural or language factors, or lack of experiences which would help develop these skills.

(c) This definition for learning disabilities applies to four and five year old children in Head Start. It may be used at a program's discretion for children younger than four or when a three year old child is referred with a professional diagnosis of learning disability. But because of the difficulty of diagnosing learning disabilities for three

year olds, when Head Start is responsible for the evaluation it is not a requirement to use this category for three year olds.

§ 1308.15 Eligibility criteria: Autism.

A child is classified as having autism when the child has a developmental disability that significantly affects verbal and non-verbal communication and social interaction, that is generally evident before age three and that adversely affects educational performance.

§ 1308.16 Eligibility criteria: Traumatic brain injury.

A child is classified as having traumatic brain injury whose brain injuries are caused by an external physical force, or by an internal occurrence such as stroke or aneurysm, with resulting impairments that adversely affect educational performance. The term includes children with open or closed head injuries, but does not include children with brain injuries that are congenital or degenerative or caused by birth trauma.

§ 1308.17 Eligibility criteria: Other impairments.

(a) The purposes of this classification, ''Other impairments,'' are:

(1) To further coordination with LEAs and reduce problems of recordkeeping;

(2) To assist parents in making the transition from Head Start to other placements; and

(3) To assure that no child enrolled in Head Start is denied services which would be available to other preschool children who are considered to have disabilities in their State.

(b) If the State Education Agency eligibility criteria for preschool children include an additional category which is appropriate for a Head Start child, children meeting the criteria for that category must receive services as children with disabilities in Head Start programs. Examples are ''preschool disabled,'' ''in need of special education,'' ''educationally handicapped,'' and ''non-categorically handicapped.''

(c) Children ages three to five, inclusive, who are experiencing developmental delays, as defined by their State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development, and who by reason thereof need special education and related services may receive services as children with disabilities in Head Start programs.

(d) Children who are classified as deaf-blind, whose concomitant hearing and visual impairments cause such severe communication and other developmental problems that they cannot be accommodated in special education programs solely for deaf or blind children are eligible for services under this category.

(e) Children classified as having multiple disabilities whose concomitant impairments (such as mental retardation and blindness), in combination, cause such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments are eligible for services under this category. The term does not include deaf-blind children, for recordkeeping purposes.

§ 1308.18 Disabilities/health services coordination.

(a) The grantee must ensure that the disabilities coordinator and the health coordinator work closely together in the assessment process and follow up to assure that the special needs of each child with disabilities are met.

(b) The grantee must ensure coordination between the disabilities coordinator and the staff person responsible for the mental health component to help teachers identify children who show signs of problems such as possible serious depression, withdrawal, anxiety or abuse.

(c) Each Head Start director or designee must supervise the administration of all medications, including prescription and over-the-counter drugs, to children with disabilities in accordance with State requirements.

(d) The health coordinator under the supervision of the Head Start director or designee must:

(1) Obtain the doctor's instructions and parental consent before any medication is administered.

(2) Maintain an individual record of all medications dispensed and review the record regularly with the child's parents.

(3) Record changes in a child's behavior which have implications for drug dosage or type and share this information with the staff, parents and the physician.

(4) Assure that all medications, including those required by staff and volunteers, are adequately labeled, stored under lock and key and out of reach of children, and refrigerated, if necessary.

Subpart E—Education Services Performance Standards

§ 1308.19 Developing individualized education programs (IEPs)

(a) When Head Start provides for the evaluation, the multidisciplinary evaluation team makes the determination whether the child meets the Head Start eligibility criteria. The multidisciplinary evaluation team must assure that the evaluation findings and recommendations, as well as information from developmental assessment, observations and parent reports, are considered in making the determination whether the child meets Head Start eligibility criteria.

(b) Every child receiving services in Head Start who has been evaluated and found to have a disability and in need of special education must have an IEP before special education and related services are provided to ensure that comprehensive information is used to develop the child's program.

(c) When the LEA develops the IEP, a representative from Head Start must attempt to participate in the IEP meeting and placement decision for any child meeting Head Start eligibility requirements.

(d) If Head Start develops the IEP, the IEP must take into account the child's unique needs, strengths, developmental potential and the family strengths and circumstances as well as the child's disabilities.

(e) The IEP must include:

(1) A statement of the child's present level of functioning in the social-emotional, motor, communication, self-help, and cognitive areas of development, and the identification of needs in those areas requiring specific programming.

(2) A statement of annual goals, including short term objectives for meeting these goals.

(3) A statement of services to be provided by each Head Start component that are in addition to those services provided for all Head Start children, including transition services.

(4) A statement of the specific special education services to be provided to the child and those related services necessary for the child to participate in a Head Start program. This includes services provided by Head Start and services provided by other agencies and non-Head Start professionals.

(5) The identification of the personnel responsible for the planning and supervision of services and for the delivery of services.

(6) The projected dates for initiation of services and the anticipated duration of services.

(7) A statement of objective criteria and evaluation procedures for determining at least annually whether the short-term objectives are being achieved or need to be revised.

(8) Family goals and objectives related to the child's disabilities when they are essential to the child's progress.

(f) When Head Start develops the IEP, the team must include:

(1) The Head Start disabilities coordinator or a representative who is qualified to provide or supervise the provision of special education services;

(2) The child's teacher or home visitor;

(3) One or both of the child's parents or guardians; and

(4) At least one of the professional members of the multidisciplinary team which evaluated the child.

(g) An LEA representative must be invited in writing if Head Start is initiating the request for a meeting.

(h) The grantee may also invite other individuals at the request of the parents and other individuals at the discretion of the Head Start program, including those component staff particularly involved due to the nature of the child's disability.

(i) A meeting must be held at a time convenient for the parents and staff to develop the IEP within 30 calendar days of a determination that the child needs special education and related services. Services must begin as soon as possible after the development of the IEP.

(j) Grantees and their delegates must make vigorous efforts to involve parents in the IEP process. The grantee must:

(1) Notify parents in writing and, if necessary, also verbally or by other appropriate means of the purpose, attendees, time and location of the IEP meeting far enough in advance so that there is opportunity for them to participate;

(2) Make every effort to assure that the parents understand the purpose and proceedings and that they are encouraged to provide information about their child and their desires for the child's program;

(3) Provide interpreters, if needed, and offer the parents a copy of the IEP in the parents' language of understanding after it has been signed;

(4) Hold the meeting without the parents only if neither parent can attend, after repeated attempts to establish a date or facilitate their participation. In that case, document its efforts to secure the parents' participation, through records of phone calls, letters in the parents' native language or visits to parents' homes or places of work, along with any responses or results; and arrange an opportunity to meet with the parents to review the results of the meeting and secure their input and signature.

(k) Grantees must initiate the implementation of the IEP as soon as possible after the IEP meeting by modifying the child's program in accordance with the IEP and arranging for the provision of related services. If a child enters Head Start with an IEP completed within two months prior to entry, services must begin within the first two weeks of program attendance.

Subpart F—Nutrition Performance Standards

§ 1308.20 Nutrition services.

(a) The disabilities coordinator must work with staff to ensure that provisions to meet special needs are incorporated into the nutrition program.

(b) Appropriate professionals, such as physical therapists, speech therapists, occupational therapists, nutritionists or dietitians must be consulted on ways to assist Head Start staff and parents of children with severe disabilities with problems of chewing, swallowing and feeding themselves.

(c) The plan for services for children with disabilities must include activities to help children with disabilities participate in meal and snack times with classmates.

(d) The plan for services for children with disabilities must address prevention of disabilities with a nutrition basis.

Subpart G—Parent Involvement Performance Standards

§ 1308.21 Parent participation and transition of children into Head Start and from Head Start to public school.

(a) In addition to the many references to working with parents throughout these standards, the staff must carry out the following tasks:

(1) Support parents of children with disabilities entering from infant/toddler programs.

(2) Provide information to parents on how to foster the development of their child with disabilities.

(3) Provide opportunities for parents to observe large group, small group and individual activities describe in their child's IEP.

(4) Provide follow-up assistance and activities to reinforce program activities at home.

(5) Refer parents to groups of parents of children with similar disabilities who can provide helpful peer support.

(6) Inform parents of their rights under IDEA.

(7) Inform parents of resources which may be available to them from the Supplemental Security Income (SSI) Program, the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program and other sources and assist them with initial efforts to access such resources.

(8) Identify needs (caused by the disability) of siblings and other family members.

(9) Provide information in order to prevent disabilities among younger siblings.

(10) build parent confidence, skill and knowledge in accessing resources and advocating to meet the special needs of their children.

(b) Grantees must plan to assist parents in the transition of children from Head Start to public school or other placement, beginning early in the program year.

(c) Head Start grantees, in cooperation with the child's parents, must notify the school of the child's planned enrollment prior to the date of enrollment.

APPENDIX TO PART 1308—HEAD START PROGRAM PERFORMANCE STANDARDS ON SERVICES TO CHILDREN WITH DISABILITIES

This appendix sets forth guidance for the implementation of the requirements in part 1308. This guidance provides explanatory material and includes recommendations and suggestions for meeting the requirements. This guidance is not binding on Head Start grantees or delegate agencies. It provides assistance and possible strategies which a grantee may wish to consider. In instances where a permissible course of action is provided, the grantee or delegate agency may rely upon this guidance or may take another course of action that meets the applicable requirement. This programmatic guidance is included as an aid to grantees because of the complexity of providing special services to meet the needs of children with various disabilities.

Section 1308.4 Purpose and scope of disabilities service plan

Guidance for Paragraph (a)

In order to develop an effective disabilities service plan the responsible staff members need to understand the context in which a grantee operates. The Head Start program has operated under a Congressional mandate, since 1972, to make available, at a minimum, ten percent of its enrollment opportunities to children with disabilities. Head Start has exceeded this mandate and serves children in integrated, developmentally appropriate programs. The passage of the Individuals With Disabilities Education Act, formerly the Education of the Handicapped Act, and its amendments, affects Head Start, causing a shift in the nature of Head Start's responsibilities for providing services for children with disabilities relative to the responsibilities of State Education Agencies (SEA) and Local Education Agencies (LEA).

Grantees need to be aware that under the IDEA the State Education Agency has the responsibility for assuring the availability of a free appropriate public education for all children with disabilities within the legally required age range in the State. This responsibility includes general supervision of educational programs in all agencies, including monitoring and evaluating the special education and related services to insure that they meet State standards, developing a comprehensive State plan for services for children with disabilities (including a description of interagency coordination among these agencies), and providing a Comprehensive System for Personnel Development related to training needs of all special education and related service personnel involved in the education of children with disabilities served by these agencies, including Head Start programs.

Each State has in effect under IDEA a policy assuring all children with disabilities beginning at least at age three, including those in public or private institutions or other care facilities, the right to a free appropriate education and to an evaluation meeting established procedures. Head Start is either:

- The agency through which the Local Education Agency can meet its obligation to make a free appropriate public education available through a contract, State or local collaborative agreement, or other arrangement; or
- The agency in which the family chooses to have the child served rather than using LEA services.

Regardless of how a child is placed in Head Start, the LEA is responsible for the identification, evaluation and provision of a free appropriate public education for a child found to be in need of special education and related services which are mandated in the State. The LEA is responsible for ensuring that these services are provided, but not for providing them all. IDEA stresses the role of multiple agencies and requires their maintenance of effort.

The Head Start responsibility is to make available directly or in cooperation with

other agencies services in the least restrictive environment in accordance with an individualized education program (IEP) for at least ten percent of enrolled children who meet the disabilities eligibility criteria. In addition, Head Start continues to provide or arrange for the full range of health, dental, nutritional, developmental, parent involvement and social services provided to all enrolled children. Head Start has a mandate to recruit and enroll income-eligible children and children with disabilities who are most in need of services and to coordinate with the LEA and other groups to benefit children with disabilities and their families. Serving children with disabilities has strengthened Head Start's ability to individualize for all children. Head Start is fully committed to the maintenance of effort as required for all agencies by the IDEA and by the Head Start Act (Section 640(a)(2)(A)). Head Start is committed to fiscal support to assure that the services which children with disabilities need to meet their special needs will be provided in full, either directly or by a combination of Head Start funds and other resources.

These Head Start regulations facilitate coordination with the IDEA by utilizing identical terms for eligibility criteria for the most part. However, Head Start has elected to use the term ''emotional/behavioral disorder'' in lieu of ''serious emotional disturbance,'' which is used in the IDEA, in response to comments and concerns of parents and professionals. Children who meet State-developed criteria under IDEA will be eligible for services from Head Start in that State.

In order to organize activities and resources to help children with disabilities overcome or lessen their disabilities and develop their potential, it is essential to involve the education, health, social services, parent involvement, mental health and nutrition components of Head Start. Parents, staff and policy group members should discuss the various strategies for ensuring that the disabilities service plan integrates needs and activities which cut across the Head Start component areas before the plan is completed.

Advance planning and scheduling of arrangements with other agencies is a key factor in assuring timely, efficient services. Local level interagency agreements can greatly facilitate the difficult tasks of locating related service providers, for example, and joint community screening programs can reduce delays and costs to each of the participating agencies.

Guidance for Paragraph (b)

The plan and the annual updates need to be specific, but not lengthy. As changes occur in the community, the plan needs to reflect the changes which affect services.

Guidance for Paragraph (c)

Grantees should ensure that the practices they use to provide special services do not result in undue attention to a child with a disability. For example, providing names and schedules of special services for children with disabilities in the classroom is useful for staff or volunteers coming into that classroom but posting them would publicize the disability of the individual children.

Guidance for Paragraph (d)

Staff should work for the children's greater independence by encouraging them to try new things and to meet appropriate goals by small steps. Grantees should help children with disabilities develop initiative by including them in opportunities to explore, to create, and to ask rather than to answer questions. The children need opportunities to use a wide variety of materials including science tools, art media and costumes in order to develop skills, imagination and originality. They should be included on field trips, as their experience may have been limited, for example, by an orthopedic impairment.

Just as a program makes available pictures and books showing children and adults from representative cultural, ethnic and occupational groups, it should provide pictures and books which show children and adults with disabilities, including those in active roles.

Staff should plan to answer questions children and adults may have about disabilities. This promotes acceptance of a child with disabilities for him or herself and leads to treating the child more normally. Effective curricula are available at low cost for helping children and adults understand disabilities and for improving attitudes and increasing knowledge about disabilities. Information on these and other materials can be obtained from resource access projects contractors, which offer training and technical assistance to Head Start programs.

There are a number of useful guides for including children with disabilities in regular group activities while providing successful experiences for children who differ widely in developmental levels and skills. Some of these describe activities around a unit theme with suggestions for activities suitable for children with different skill levels. Staff need to help some children with disabilities move into developmentally appropriate play with other children.

Research has shown the effectiveness of work in small groups for appropriately selected children with disabilities. This plan allows for coordinating efforts to meet the needs of individual children as listed in their IEPs and can help focus resources efficiently.

If a deaf child who uses or needs sign language or another communication mode is enrolled, a parent, volunteer or aide who can

use that mode of communication should be provided to help the child benefit from the program.

In order to build the language and speech capabilities of many children with disabilities who have communication problems, it has been found helpful to enlist aides, volunteers, cooks, bus drivers and parents, showing them how to provide extra repetition and model gradually more advanced language as children improve in their ability to understand and use language. Small group activities for children with similar language development needs should be provided regularly as well as large group language and listening games and individual help. Helping children with intellectual delays or emotional problems or those whose experiences have been limited by other disabilities to express their own ideas and to communicate during play and throughout the daily activities is motivating and can contribute greatly to their progress.

Guidance for Paragraph (e)

The Disabilities Service Coordinator should possess a basic understanding of the scope of the Head Start effort and skills adequate to manage the agency to serve children with disabilities including coordination with other program components and community agencies and work with parents.

Guidance for Paragraph (f)

For non-verbal children, communication boards, computers and other assistive technology devices may be helpful. Technical assistance providers have information on the Technology Related Assistance for Individuals with Disabilities Act of 1988, 29 U.S.C. 2201 *et seq*. States are funded through this legislation to plan Statewide assistive technology services, which should include services for young children. Parents should be helped to understand the necessity of including assistive technology services and devices in their child's IEP in order to obtain them.

The plan should include any renovation of space and facilities which may be necessary to ensure the safety of the children or promote learning. For example, rugs or other sound-absorbing surfaces make it easier for some children to hear stories or conversation. Different surfaces on floors and play areas affect some children's mobility.

45 CFR Part 84, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance which implements the Rehabilitation Act of 1973 and the Americans with Disabilities Act require that all Federally assisted programs, including Head Start, be accessible to persons with disabilities including staff, parents and children. This does not mean that every building or part of a building must be physically accessible, but the program services as a whole must be accessible. Structural changes to make the program services available are required if alternatives such as reassignment of classes or moving to different rooms are not possible. Information on the accessibility standards is available from RAPs or the U.S. Department of Justice, Civil Rights Division, Coordination and Review Section, P.O. Box 66118, Washington, DC 20035–6115.

Staff should ensure that children with physical disabilities have chairs and other pieces of furniture of the correct size and type for their individual needs as they grow. Agencies such as United Cerebral Palsy, Easter Seal Societies or SEAs can provide consultation on adapting or purchasing the appropriate furniture. The correct positioning of certain children is essential and requires expert advice. As the children grow, the furniture and equipment should be checked by an expert, such as a physical therapist, because the wrong fit can be harmful. Efforts should be made to use furniture sized and shaped to place children at the same level as their classmates whenever possible.

Guidance for Paragraph (h)

The plan should specify:

- Overall goals of the disability effort.
- Specific objectives and activities of the disability effort.
- How and when specific activities will be carried out and goals attained.
- Who will be responsible for the conduct of each element of the plan.
- How individual activities will be evaluated.

The plan should address:

- Enrollment information, including numbers of children and types of disabilities, known and estimated.
- Identification and recruitment of children with disabilities. Participation in Child Find and list of major specialized agencies approached.
- Screening.
- Developmental Assessment.
- Evaluation.
- The multidisciplinary team and its work.
- The process for developing IEPs.
- The provision of program services and related services.
- Program accessibility.
- Recordkeeping and reporting.
- Confidentiality of information.
- Any special safety needs.
- Medications.
- Transportation.
- The process for identifying and meeting training and technical assistance needs.
- Special parent involvement needs.
- Planned actions to increase the ability of staff to serve children with more severe disabilities and the number of children with more severe disabilities served.

• Transitioning of children in and out to the next program.

Particular attention should be given to addressing ways to:

• Involve parents throughout the disability effort, and

• Work with other agencies in serving children with disabilities. It should be possible for a reader to visualize how and by whom services will be delivered. Coordination with other agencies should be described, as well as the process for developing local agreements with other agencies. The RAPs can provide samples and models for the process of developing agreements with LEAs.

Guidance for Paragraph (j)

Children may spend part of the program hours in Head Start for a mainstreaming experience and part in a specialized program such as an Easter Seal Society or a local mental health center. The amount of time spent in either program should be flexible, according to the needs of the individual child. All services to be provided, including those provided by collaborating agencies, should be described in the IEP. Staff of both programs should observe each other's work with the child who is enrolled and maintain good communication.

Individual services such as occupational, physical or speech therapy, staff training, transportation, services to families or counseling may be shared by Head Start and other agencies. For example, Head Start might provide equipment and transportation while a development center might provide a facility and physical therapy for a Head Start child. Some LEAs provide resource teachers while Head Start provides a developmentally appropriate program in an integrated setting.

Hiring additional staff may be necessary to meet the needs of children with severe disabilities. Hiring an aide may be necessary on a full-time, part-time, temporary or as needed basis to assist with the increased demands of a child with a severe disability. However, aides should not be assigned the major responsibility for providing direct services. Aides and volunteers should be guided and supervised by the disabilities service coordinator or someone with special training. It is desirable to have the services of a nurse, physical therapist or licensed practical nurse available for children with severe health or physical disabilities.

Volunteers trained by professionals to work specifically with children with disabilities can provide valuable individualized support. For example, a volunteer might be trained by a physical therapist to carry out specific follow-up activities with individual children.

Guidance for Paragraph (k)

State standards for qualifications of staff to provide special education and related services affect Head Start's acceptance as a placement site for children who have been evaluated by an LEA. Head Start grantees, like LEAs, are affected by shortages of staff meeting State qualifications and are to work toward the goal of meeting the highest State standards for personnel by developing plans to train current staff and to hire new staff so that eventually the staff will meet the qualifications. Grantees should discuss their needs for pre-service and in-service training with SEAs during annual updates of interagency agreements for use in the planning of joint State level conferences and for use in preparation of Comprehensive State Personnel Development plans. They should also discuss these needs with LEAs which provide in-service training.

The program should provide training for the regular teachers on how to modify large group, small group or individual activities to meet the needs of children with disabilities. Specific training for staff should be provided when Head Start enrolls a child whose disability or condition requires a special skill or knowledge of special techniques or equipment. Examples are structuring a language activity, performing intermittent nonsterile catheterization, changing collection bags, suctioning, or operating leg braces. Joint training with other agencies is recommended to stretch resources and exchange expertise.

Staff should have access to regular ongoing training events which keep them abreast of new materials, equipment and practices related to serving children with disabilities and to preventing disabilities. Ongoing training and technical assistance in support of the disabilities effort should be planned to complement other training available to meet staff needs. Each grantee has the responsibility to identify or arrange the necessary support to carry out training for parents and staff.

The best use of training funds has resulted when programs carry out a staff training needs assessment and relate current year training plans to previous staff training with the goal of building core capability. Staff who receive special training should share new knowledge with the rest of the staff.

The core capability of the program is enhanced when speech, language and other therapy is provided in the regular site whenever possible. This allows for the specialist to demonstrate to regular staff and plan for their follow through. It also reduces costs and time spent transporting children to clinics and other settings. When university graduate students are utilized to provide special services as part of their training, it is helpful to arrange for their supervisors to monitor

their work. Grantees arranging for such assistance are providing a valuable internship site and it is to the university's advantage to have their students become familiar with programs on-site. Grantees should negotiate when developing interagency agreements to have services provided on-site to the greatest extent possible.

The Head Start Act, Section 648 (42 U.S.C. 9843) (a)(2), calls for training and technical assistance to be offered to all Head Start programs with respect to services for children with disabilities without cost through resource access projects which serve each region of the country. The technical assistance contractors contact each grantee for a needs assessment and offer training. While their staffs are small and their budgets limited, they are experienced and committed to meeting as many needs as they can and welcome inquiries. A brochure with names and addresses of the technical assistance providers is available from ACYF/HS, P.O. Box 1182, Washington, DC 20013.

The SEA is responsible for developing a Comprehensive System of Personnel Development. It is important that Head Start training needs be conveyed to this group for planning purposes so that all available resources can be brought to bear for staff training in Head Start. Grantees should take advantage of free or low-cost training provided by SEAs, LEAs, community colleges and other agencies to augment staff training.

Many agencies offer free training for staff and parents. An example is the Epilepsy Foundation of America with trained volunteers throughout the country. The Lighthouse of New York City has developed a training program on early childhood and vision which was field-tested in Head Start and is suitable for community agencies. Head Start and the American Optometric Association have signed a memorandum of understanding under which member optometrists offer eye health education and screening. State-funded adult education and training programs or community colleges make available parenting, child development and other courses at low or no cost. Grantees should consider the need for training in working with parents, in developing working collaborative relationships and in networking when planning training.

The disabilities coordinator needs to work closely with the education and health coordinators to provide or arrange training for staff and parents early in each program year on the prevention of disabilities. This should include the importance of observing signs that some children may have mild or fluctuating hearing losses due to middle ear infections. Such losses are often undetected and can cause problems in learning speech and language. Many children with hearing losses benefit from amplification and auditory training in how to use their remaining hearing most efficiently.

The disabilities coordinator should also work with the education coordinator to provide timely staff training on recognizing signs that some children may be at high risk for later learning problems as well as emotional problems resulting from failure and frustration. This training should address ways to help children develop the skills necessary for later academic learning, such as following directions calling for more than one action, sequencing, sustaining attention, and making auditory and visual discriminations.

Guidance for Paragraph (l)

The RAPS can provide information on agreements which have been developed between Head Start and SEAs and between Head Start and LEAs and other agencies. Such agreements offer possibilities to share training, equipment and other resources, smoothing the transition from Head Start to public or private school for children and their parents. Some of these agreements specify cost- and resource-sharing practices. Tribal Government Head Start programs should maximize use of Bureau of Indian Affairs, LEA and Head Start funds through cooperative agreements. Indian grantees should contact ACYF for referral to technical assistance in this regard. Grantees should bear in mind that migrant children are served in the majority of States and include consideration of their special needs, including the necessity for rapid provision of special education and related services, in agreements with LEAs and other agencies.

Guidance for Paragraph (m)

In developing the plan and the budget which is a part of the grant application process, it is important to budget adequately for the number of children with disabilities to be served and the types and severity of their disabilities. The budget should reflect resources available from other agencies as well as the special costs to be paid for from Head Start funds. The Head Start legislation requires Head Start to access resources to meet the needs of all the children enrolled, including those with disabilities.

An effective plan calls for the careful use of funds. The Disabilities Services Coordinator needs to keep current with the provisions of Part B of the IDEA and the services which may be available for three through five year-old children under this Act. Coordinators also need to utilize the expanded services under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program and Supplemental Security Income program.

To assist in the development of the plan, it may be helpful to establish an advisory committee for the disability effort or to expand the scope of the health advisory committee.

Guidance for Paragraph (o)

Examples of evaluation costs which can be covered include professional assessment by the multidisciplinary evaluation team, instruments, professional observation and professional consultation. If consultation fees for multidisciplinary evaluation team members to participate in IEP meetings are not available from another source, they are allowable expenditures and need to be provided to meet the performance standards.

Many children with disabilities enrolled in Head Start already receive services from other agencies, and grantees should encourage these agencies to continue to provide services. Grantees should use other community agencies and resources to supplement services for children with disabilities and their families.

By planning ahead, grantees can pool resources to schedule the periodic use of experts and consultants. Grantees can timeshare, reducing travel charges and assuring the availability of scarce expertise. Some LEAs and other agencies have enabling legislation and funds to contract for education, health, and developmental services of the type Head Start can provide. Grantees can also help increase the amount of preschool funding available to their State under the Individuals With Disabilities Education Act. The amount of the allocation to each SEA and to the public schools is affected by the number of three through five year old children with IEPs in place by December 1 of each year. By establishing good working relationships with State Public Health personnel and including them on advisory committees, health resources can be more easily utilized.

It may be helpful to explore the possibility of a cooperative agreement with the public school system to provide transportation. If the lack of transportation would prevent a child with disabilities from participating in Head Start, program funds are to be used to provide this related service before a delay occurs which would have a negative effect on the child's progress. The major emphasis is on providing the needed special help so that the child can develop to the maximum during the brief time in Head Start.

The Americans with Disabilities Act of 1990 (42 U.S.C. 12101) requires that new buses (ordered after August 26, 1990) by public bus systems must be accessible to individuals with disabilities. New over-the-road buses ordered by privately operated bus and van companies (on or after July 26, 1996 or July 26, 1997 for small companies) must be accessible. Other new vehicles, such as vans, must be accessible, unless the transportation company provides service to individuals with disabilities that is equivalent to that operated for the general public. The Justice Department enforces these requirements.

Efforts should be made to obtain expensive items such as wheelchairs or audiometers through resources such as Title V (formerly Crippled Children's Services). Cooperative arrangements can be made with LEAs and other agencies to share equipment such as tympanometers. Special equipment such as hearing aids may be obtained through EPSDT or from SSI funds for those children who have been found eligible. Some States have established libraries of assistive technology devices and rosters of expert consultants.

Section 1308.5 Recruitment and Enrollment of Children With Disabilities

Guidance for Paragraph (a)

Head Start can play an important role in Child Find by helping to locate children in need and hardest to reach, such as immigrants and non-English speakers. In cooperation with other community groups and agencies serving children with disabilities, Head Start programs should incorporate in their outreach and recruitment procedures efforts to identify and enroll children with disabilities who meet eligibility requirements and whose parents desire the child's participation.

Integrating children with severe disabilities for whom Head Start is an appropriate placement is a goal of ACYF. Grantees should bear in mind that 45 CFR part 84, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance or the Rehabilitation Act of 1973 (20 U.S.C. 794) states that any program receiving Federal funds may not deny admission to a child solely on the basis of the nature or extent of a disabling condition and shall take into account the needs of the child in determining the aid, benefits, or services to be provided. Many children who appear to have serious impairments are nevertheless able to make greater gains in an integrated setting than in a segregated classroom for children with disabilities.

The key factor in selecting an appropriate placement is the IEP. The need of the individual child and the ability of the child to benefit are determining factors. Likewise, the amount of time per day or week to be spent in the regular setting and/or in other settings is determined by the IEP. The IEP of a child with a severe emotional/behavioral disorder, for example, might realistically call for less than full day attendance or for dual placement. Another factor to consider is that according to the PIR, the majority of children with severe impairments are provided special services by both Head State

staff and staff of other agencies, sharing the responsibility. Many grantees have successfully served children with moderate and severe disabilities.

The disabilities coordinator's responsibility includes providing current names of appropriate specialized agencies serving young children with disabilities and the names of LEA Child Find contact persons to the director to facilitate joint identification of children with disabilities. It also includes learning what resources other agencies have available and the eligibility criteria for support from State agencies, Supplemental Security Income (SSI), Title V, Maternal and Child Health Block Grants, Title XIX (EPSDT/Medicaid), Migrant Health Centers, Developmental Disabilities programs, Bureau of Indian Affairs, third party payers such as insurance companies and other sources.

Grantees need to develop lists of appropriate referral sources. These include hospital child life programs, SSI, early intervention programs funded by Part H of the IDEA or other sources, EPSDT providers, infant stimulation programs, Easter Seal and United Cerebral Palsy agencies, mental health agencies, Association for Retarded Citizens chapters, Developmental Disabilities Planning Councils, Protection and Advocacy Systems, University Affiliated Programs, the LEA Child Find, and the medical community.

Head Start programs are encouraged to increase the visibility of the Head Start mainstreaming effort within the community by:

- Including community child service providers on policy council health and disability advisory boards and in other relevant Head Start activities.
- Making presentations on Head Start mainstreaming experiences at local, State and Regional meetings and conferences, such as the National Association for the Education of Young Children, Council for Exceptional Children, and the Association for the Care of Children's Health.
- Participating in interagency planning activities for preschool infant and toddler programs such as the State Interagency Coordinating Councils supported under the IDEA.

Guidance for Paragraph (b)

Grantees should maintain records of outreach, recruitment, and service activities for children with disabilities and their families.

Each grantee should develop a policy on what types of information are to be included in a comprehensive file for each disabled child. The policy should outline the locations where a copy of each record will be sent. For example, while a comprehensive file will be maintained at the Head Start program central office (where the disability services coordinator and component coordinators may be based), a teacher must have access to a child's IEP and progress notes in order to plan effectively. Confidentiality needs to be maintained in a manner which allows for access to information by appropriate staff while meeting applicable Head Start and State requirements.

Guidance for Paragraph (d)

Staff should assist families who need help in obtaining immunizations before the program year begins, bearing in mind that a goal of parent involvement and social service activities is to encourage independence and develop skills in meeting timelines when seeking services for children. Care should be taken that children are not denied enrollment, but that their families receive the necessary assistance to meet entrance requirements. ''Healthy Young Children: A Manual for Programs,'' (a cooperative effort of the Administration for Children, Youth and Families, the American Academy of Pediatrics; the Division of Maternal and Child Health, U.S. Department of Health and Human Services; Georgetown University Child Development Center; Massachusetts Department of Public Health, and the National Association for the Education of Young Children, 1988, copyright, NAEYC) contains best practice guidance.

Section 1308.6 Assessment of Children

Guidance for Paragraph (b)

Early screening is essential because of the time required for the steps necessary before special services can begin. It has been very difficult for some grantees to complete health screenings in a timely manner for several reasons including the lack of resources, especially in rural areas; the need to rely on donated services from agencies whose schedules have been especially overloaded during September and October after the start of the Head Start program year; lack of summer staff in most programs; and the difficulty in reaching some families. Lack of coordination among agencies with legislative responsibility for identifying children with disabilities has resulted in duplication and unacceptable delays in providing required services for many grantees. Other grantees, however, have demonstrated the ability to complete screenings early in the program year without difficulty. Many programs already complete screening by 45 days after the first day of program operation. Some participate in spring or summer screening programs in their areas before the fall opening. Grantees are encouraged to schedule well in advance with clinics and with such providers as EPSDT and the Indian Health Service for timely screening and

any subsequent evaluations that may be needed.

Recently, a number of legislative and legal requirements have increased the resources available for the screening and evaluation of children. Title XIX, EPDST/Medicaid, has new requirements for screening and evaluation, as well as treatment; the Social Security Administration has modified eligibility requirements for children with disabilities so that more services will be available; and all States have assured that services will be provided from at least age three under IDEA so that LEAs in more States will be engaged in identifying and evaluating children from birth to age six.

In response to these changes, the Department of Health and Human Services and the Department of Education, through the Federal Interagency Coordinating Council, have developed a cooperative agreement for coordinated screening. Head Start is one of the participating agencies which will work together to plan and implement community screenings, assisting the LEAs which have the major responsibility for identifying every child with a disability under the IDEA. In addition, programs may elect to make some summer staff available for activities to close out program work in the spring and prepare for the fall.

These developments make timely screening feasible. They also make it possible to expedite immunizations. State-of-the-art coordinated screening programs make immunizations available.

This coordination can focus staff energy on assisting families to have their children immunized during the screening phase rather than making repeated follow-up efforts after the program for children has begun. Coordinated screening also provides an excellent parent education opportunity. Information on child development, realistic expectations for preschoolers and such services as WIC can be provided during the screening. Some communities have combined screening with well-received health fairs.

The staff should be involved in the planning of screening to assure that screening requirements are selected or adapted with the specific Head Start population and goals of the screening process in mind. Instruments with age-appropriate norms should be used. Children should be screened in their native language. Universities, civic organizations or organizations to aid recent immigrants may be able to locate native speakers to assist. The RAPs can provide information on the characteristics of screening instruments.

Current best practice indicates that individual pure tone audiometry be used as the first part of a screening program with children as young as three. The purpose is to identify children with hearing impairments that interfere with, or have the potential to interfere with communication. The recommended procedure is audiometric screening at 20 dB HL (re ANSI–1969) at the frequencies of 1000, 2000, and 4000 Hz, (and at 500 Hz unless acoustic immittance audiometry is included as the second part of the screening program and if the noise level in the room permits testing at that frequency.) Acoustic immittance audiometry (or impedance audiometry) is recommended as the second part of the program to identify children who have middle-ear disorders.

The audiometric screening program should be conducted or supervised by an audiologist. Nonprofessional support staff have successfully carried out audiometric screening with appropriate training and supervision.

When a child fails the initial screening, an audiometric rescreening should be administered the same day or no later than within 2 weeks. A child who fails the rescreening should be referred for an evaluation by an audiologist.

Current best practice calls for annual hearing tests. Frequent rescreening is needed for children with recurrent ear infections. Grantees who contract or arrange for hearing testing should check to assure that the testing covers the three specified frequencies and that other quality features are present. Speech, hearing and language problems are the most widespread disabilities in preschool programs and quality testing is vital for early detection and remediation.

Playing listening games prior to testing and getting use to earphones can help children learn to respond to a tone and improve the quality of the testing.

Some grantees have found it strengthens the skills of their staff to have all members learn to do developmental screening. This can be a valuable in-service activity especially for teachers. State requirements for qualifications should be checked and nonprofessional screeners should be trained.

Some programs have involved trained students from schools of nursing, child development or special education graduate students, or medical students who must carry out screening work as part of their required experience.

Guidance for Paragraph (d)

Parents should be provided assistance if necessary, so that they can participate in the developmental assessment.

Grantees should offer parents assistance in understanding the implications of developmental assessments as well as medical, dental or other conditions which can affect their child's development and learning.

Development assessment is an ongoing process and information from observations in the Head Start center and at home should be recorded periodically and updated in each developmental area in order to document progress and plan activities.

Disabilities coordinators, as well as education staff, need to be thoroughly familiar with developmental assessment activities such as objective observation, time sampling and obtaining parent information and the use of formal assessment instruments. Knowledge of normal child development and understanding of the culture of the child are also important.

Guidance for Paragraph (e)

While the LEA is responsible for assuring that each child who is referred is evaluated in accordance with the provisions of IDEA and usually provides the evaluation, grantees may sometimes provide for the evaluation. In that event, grantees need to assure that evaluation specialists in appropriate areas such as psychology, special education, speech pathology and physical therapy coordinate their activities so that the child's total functioning is considered and the team's findings and recommendations are integrated.

Grantees should select members of the multidisciplinary evaluation team who are familiar with the specific Head Start population, taking into account the age of the children and their cultural and ethnic background as they relate to the overall diagnostic process and the use of specific tests.

Grantees should be certain that team members understand that Head Start programs are funded to provide preschool developmental experiences for all eligible children, some of whom also need special education and related services. The intent of the evaluation procedures is to provide information to identify children who have disabling conditions so they can receive appropriate assistance. It is also the intent to avoid mislabeling children for whom basic Head Start programming is designed and who may show developmental delays which can be overcome by a regular comprehensive program meeting the Head Start Performance Standards.

When a grantee provides for the evaluation of a child, it is important that the Head Start eligibility criteria be explained to the evaluation team members and that they be informed as to how the results will be used.

Grantees should require specific findings in writing from the evaluation team, and recommendations for intervention when the team believes the child has a disability. The findings will be used in developing the child's IEP to ensure that parents, teachers and others can best work with the child. Some grantees have obtained useful functional information by asking team members to complete a brief form describing the child's strengths and weaknesses and the effects of the disability along with suggestions for special equipment, treatment or services. The evaluators should be asked in advance to provide their findings promptly in easily understood terms. They should provide separate findings and, when they agree, consensus professional opinions. When planning in advance for evaluation services from other agencies, grantees should try to obtain agreements on prompt timing for delivery of reports which are necessary to plan services.

To assist the evaluation team, Head Start should provide the child's screening results, pertinent observations, and the results of any developmental assessment information which may be available.

It is important that programs ensure that no individual child or family is labeled, mislabeled, or stigmatized with reference to a disabling condition. Head Start must exercise care to ensure that no child is misidentified because of economic circumstances, ethnic or cultural factors or developmental lags not caused by a disability, bilingual or dialectical differences, or because of being non-English speaking.

If Head Start is arranging for the evaluation, it is important to understand that a child whose problem has been corrected (e.g., a child wearing glasses whose vision is corrected and who does not need special education and related services) does not qualify as a child with a disability. A short-term medical problem such as post-operative recovery or a problem requiring only medical care and health monitoring when the evaluation specialists have not stated that special education and related services are needed does not qualify as a disability.

The evaluation team should include consideration of the way the disability affects the child's ability to function as well as the cause of the condition.

Some children may have a recent evaluation from a clinic, hospital or other agency (other than the LEAs) prior to enrolling in Head Start. If that evaluation did not include needed functional information or a professional opinion as to whether the child meets one of the Head Start eligibility criteria, the grantee should contact the agency to try to obtain that information.

Some children, prior to enrolling in Head Start, already have been diagnosed as having severe disabilities and a serious need for services. Some of these children already may be receiving some special assistance from other agencies for their disabilities but lack developmental services in a setting with other children. Head Start programs may best meet their needs by serving them jointly, i.e., providing developmental services while disability services are provided from another source. It is important in such situations that regular communication take place between the two sites.

Beginning in 1990, State EPSDT/Medicaid programs must, by law, evaluate and provide services for young children whose families meet eligibility criteria at 133 percent of the poverty levels. This is a resource for Head

Start and it is important to become aware of EPSDT provisions.

Section 1308.7 Eligibility Criteria: Health Impairment Guidance

Guidance for Paragraph (c)

Many health impairments manifest themselves in other disabling conditions. Because of this, particular care should be taken when classifying a health impaired child.

Guidance for Paragraph (b)

Because AIDS is a health impairment, grantees will continue to enroll children with AIDS on an individual basis. Staff need to be familiar with the Head Start Information Memorandum on Enrollment in Head Start Programs of Infants and Young Children with Human Immunodeficiency Virus (HIV), AIDS Related Complex (ARC), or Acquired Immunodeficiency Syndrome (AIDS) dated June 22, 1988. This guidance includes material from the Centers for Disease Control which stresses the need for a team, including a physician, to make informed decisions on enrollment on an individual basis. It provides guidance in the event that a child with disabilities presents a problem involving biting or bodily fluids. The guidance also discusses methods for control of all infectious diseases through stringent cleanliness standards and includes lists of Federal, State and national agencies and organizations that can provide additional information as more is learned. Staff should be aware that there is a high incidence of visual impairment among children with HIV and AIDS.

Guidance for Paragraph (c)

Teachers or others in the program setting are in the best position to note the following kinds of indications that a child may need to be evaluated to determine whether an attention deficit disorder exists:

(1) Inability of a child who is trying to participate in classroom activities to be able to orient attention, for example to choose an activity for free time or to attend to simple instructions;

(2) Inability to maintain attention, as in trying to complete a selected activity, to carry out simple requests or attend to telling of an interesting story; or

(3) Inability to focus attention on recent activities, for example on telling the teacher about a selected activity, inability to tell about simple requests after carrying them out, or inability to tell about a story after hearing it.

These indicators should only be used after the children have had sufficient time to become familiar with preschool procedures and after most of the children are able easily to carry out typical preschool activities.

Culturally competent staff recognize and appreciate cultural differences, and this awareness needs to include understanding that some cultural groups may promote behavior that may be misinterpreted as inattention. Care must be taken that any deviations in attention behavior which are within the cultural norms of the child's group are not used as indicators of possible attention deficit disorder.

A period of careful observation over three months can assure that adequate documentation is available for the difficult task of evaluation. It also provides opportunity to provide extra assistance to the child, perhaps through an aide or special education student under the teacher's direction, which might improve the child's functioning and eliminate the behavior taken as evidence of possible attention deficit disorder.

Attention deficit disorders are not the result of learning disabilities, emotional/behavioral disabilities, autism or mental retardation. A comprehensive psychological evaluation may be carried out in some cases to rule out learning disability or mental retardation. It is possible, however, in some instances for this disability to coexist with another disability. Children who meet the criteria for multiple disabilities (e.g., attention deficient disorder and learning disability, or emotional/behavioral disorder, or mental retardation) would be eligible for services as children with multiple disabilities or under their primary disability.

Teacher and parent reports have been found to provide the most useful information for assessment of children suspected of having attention deficit disorder. They are also useful in planning and providing special education intervention. The most successful approach may be a positive behavior modification program in the classroom, combined with a carryover program in the home. Prompt and clear response should be provided consistently. Positive reinforcement for appropriate behavior, based on rewards such as stickers or small items desired by the child has been found effective for children with this disorder, along with occasional withholding of rewards or postponing of desired activities in the face of inappropriate behavior. Effective programs suggest that positive interactions with the child after appropriate behavior are needed at least three times as often as any negative response interactions after inappropriate behavior. Consultants familiar with behavior modification should be used to assist teachers in planning and carrying out intervention which can maintain this positive to negative ratio while shaping behaviors. These behavior interventions can be provided in mainstream placements with sufficient personnel.

Suggested Primary Members of A Head Start Evaluation Team for Health Impaired Children:

Physician.
Pediatrician.
Psychologist.
Other specialists related to specific disabilities.

Possible Related Services:

(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)

Family counseling.
Genetic counseling.
Nutrition counseling.
Recreational therapy.
Supervision of physical activities.
Transportation.
Assistive technology devices or services

Section 1308.8 Eligibility Criteria: Emotional/ Behavioral Disorders

Guidance for Paragraph (a)

Staff should insure that behavior which may be typical of some cultures or ethnic groups, such as not making eye contact with teachers or other adults or not volunteering comments or initiating conversations are not misinterpreted.

The disability, social service and parent involvement coordinators should consider providing extra attention to children at-risk for emotional/behavioral disorders and their parents to help prevent a disability. Members of the Council of One Hundred, Kiwanis, Urban League, Jaycees, Rotary, Foster Grandparents, etc. may be able to provide mentoring and individual attention.

Suggested Primary Members of a Head Start Evaluation Team for Emotional/behavioral Disorders:

Psychologist, psychiatrist or other clinically trained and State qualified mental health professionals.
Pediatrician.
Possible Related Services:

(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)

Behavior management.
Environmental adjustments.
Family counseling.
Psychotherapy.
Transportation.
Assistive technology.

Section 1308.9 Eligibility Criteria: Speech or Language Impairment

Guidance for Paragraph (a)

Staff familiar with the child should consider whether shyness, lack of familiarity with vocabulary which might be used by testers, unfamiliar settings, or linguistic or cultural factors are negatively influencing screening and assessment results. Whenever possible, consultants trained in assessing the speech and language skills of young children should be selected. The child's ability to communicate at home, on the playground and in the neighborhood should be determined for an accurate assessment. Review of the developmentally appropriate age ranges for the production of difficult speech sounds can also help reduce over-referral for evaluation.

Suggested Primary Members of a Head Start Evaluation Team for Speech or Language Impairment:

Speech Pathologist.
Language Pathologist.
Audiologist.
Otolaryngologist.
Psychologist.
Possible Related Services:

(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)

Environmental adjustments.
Family counseling.
Language therapy.
Speech therapy.
Transportation.
Assistive technology devices or services.

Section 1308.10 Eligibility Criteria: Mental Retardation

Guidance for Paragraph (a)

Evaluation instruments with age-appropriate norms should be used. These should be administered and interpreted by professionals sensitive to racial, ethnic and linguistic differences. The diagnosticians must be aware of sensory or perceptual impairments that the child may have (e.g., a child who is visually impaired should not be tested with instruments that rely heavily on visual information as this could produce a depressed score from which erroneous diagnostic conclusions might be drawn).

Suggested primary members of a Head Start evaluation team for mental retardation:

Psychologist.
Pediatrician.
Possible related services:

(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)

Environmental adjustments.
Family counseling.
Genetic counseling.
Language therapy.
Recreational therapy.
Speech therapy.
Transportation.
Nutrition counseling.

Section 1308.11 Eligibility Criteria: Hearing Impairment Including Deafness

Guidance for Paragraph (a)

An audiologist should evaluate a child who has failed rescreening or who does not respond to more than one effort to test the child's hearing. If the evaluation team determines that the child has a disability, the team should make recommendations to meet the child's needs for education and medical care or habilitation, including auditory training to learn to use hearing more effectively.

Suggested Primary Members of a Head Start Evaluation Team for Hearing Impairment:

Audiologist.
Otolaryngologist.
Possible Related Services:
(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)
Auditory training.
Aural habilitation.
Environmental adjustments.
Family counseling.
Genetic counseling.
Language therapy.
Medical treatment.
Speech therapy.
Total communication, speechreading or manual communication.
Transportation.
Use of amplification.
Assistive technology devices or services.

Section 1308.12 Eligibility Criteria: Orthopedic Impairment

Guidance for Paragraph (a)

Suggested Primary Members of a Head Start Evaluation Team for Orthopedic Impairment:

Pediatrician.
Orthopedist.
Neurologist.
Occupational Therapist.
Physical Therapist.
Rehabilitation professional.
Possible Related Services:
(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)
Environmental adjustments.
Family counseling.
Language therapy.
Medical treatment.
Occupational therapy.
Physical therapy.
Assistive technology.
Recreational therapy.
Speech therapy.
Transportation.
Nutrition counseling.

Section 1308.13 Eligibility Criteria: Visual Impairment Including Blindness

Guidance for Paragraph (a)

Primary Members of an Evaluation Team for Visual Impairment including Blindness:

Ophthalmologist.
Optometrist.
Possible Related Services:
(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)
Environmental adjustments.
Family counseling.
Occupational therapy.
Orientation and mobility training.
Pre-Braille training.
Recreational therapy.
Sensory training.
Transportation.
Functional vision assessment and therapy.

Section 1308.14 Learning Disabilities

Guidance for Paragraph (a)

When a four or five-year-old child shows signs of possible learning disabilities, thorough documentation should be gathered. For example, specific anecdotal information and samples of the child's drawings, if appropriate, should be included in the material given to the evaluation team.

A Master's degree level professional with a background in learning disabilities should be a member of the evaluation team.

Possible Related Services:
(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)
Vision evaluation.
Neurology.
Psychology.
Motor development.
Hearing evaluation.
Child psychiatry.
Pediatric evaluation.

Section 1308.15 Autism

A child who manifests characteristics of the condition after age three can still be diagnosed as having autism. Autism does not include children with characteristics of serious emotional disturbance.

Suggested possible members of a Head Start evaluation team:

Psychologist.
Pediatrician.
Audiologist.
Psychiatrist.
Language pathologist.
Possible related services:
(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)

Family support services.
Language therapy.
Transportation.

Section 1308.16 Traumatic Brain Injury

Traumatic brain injury does not include congenital brain injury.

Suggested possible members of an evaluation team included:
Psychologist.
Physical therapist.
Speech or language pathologist.
Possible related services:
(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)
Rehabilitation professional.
Occupational therapy.
Speech or language therapy.
Assistive technology.

Section 1308.17 Other Impairments

This category was included to ensure that any Head Start child who meets the State eligibility criteria as developmentally delayed or State-specific criteria for services to preschool children with disabilities is eligible for needed special services either within Head Start or the State program.

Suggested primary members of an evaluation team for other impairments meeting State eligibility criteria for services to preschool children with disabilities.
Pediatrician.
Psychologist.
Other specialists with expertise in the appropriate area(s).
Possible Related Services:
(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)
Occupational therapy.
Speech or language therapy.
Family Counseling.
Transportation.

Deaf-blindness

Information on assistance or joint services for deaf-blind children can be obtained through SEAs.

Multiple Disabilities

A child who is deaf and has speech and language impairments would not be considered to have multiple disabilities, as it could be expected that these impairments were caused by the hearing loss.

Suggested primary members of a Head Start evaluation team:
Audiologists.
Special educators.
Speech, language or physical therapists.
Psychologists or psychiatrists.
Rehabilitation professional.
Possible related services:
(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)
Speech, language, occupational or physical therapists as needed.
Assistive technology devices or services.
Mental health services.
Transportation.

Section 1308.18 Disabilities/Health Services Coordination

Guidance for Paragraph (a)

It is important for staff to maintain close communication concerning children with health impairments. Health and disability services coordinators need to schedule frequent re-tests of children with recurrent middle ear infections and to ensure that they receive ongoing medical treatment to prevent speech and language delay. They should ensure that audiometers are calibrated annually for accurate testing of hearing. Speech and hearing centers, the manufacturer, or public school education services districts should be able to perform this service. In addition, a daily check when an audiometer is in use and a check of the acoustics in the testing site are needed for accurate testing.

Approximately 17 percent of Down Syndrome children have a condition of the spine (atlanto-axial instability) and should not engage in somersaults, trampoline exercises, or other activities which could lead to spinal injury without first having a cervical spine x-ray.

Guidance for Paragraph (b)

The disabilities services coordinator needs to assure that best use is made of mental health consultants when a child appears to have a problem which may be symptomatic of a disability in the social/emotional area. Teachers, aides and volunteers should keep anecdotal records of the child's activities, tantrums, the events which appear to precipitate the tantrums, language use, etc. These can provide valuable information to a mental health consultant, who should be used primarily to make specific recommendations and assist the staff rather than to document the problem.

The mental health coordinator can cooperate in setting up group meetings for parents of children with disabilities which provide needed support and a forum for talking over mutual concerns. Parents needing community mental health services may need direct assistance in accessing services, especially at first.

The disability services coordinator needs to work closely with staff across components to help parents of children who do not have disabilities become more understanding and knowledgeable about disabilities and ways to

lessen their effects. This can help reduce the isolation which some families with children with disabilities experience.

Guidance for Paragraphs (c) and (d)

Arrangements should be made with the family and the physician to schedule the administration of medication during times when the child is most likely to be under parental supervision.

Awareness of possible side effects is of particular importance when treatment for a disability requires administration of potentially harmful drugs (e.g., anti-convulsants, amphetamines).

Section 1308.19 Developing Individual Education Programs (IEPs)

Guidance for Paragraph (a)

The IEP determines the type of placement and the specific programming which are appropriate for a child. The least restrictive environment must be provided and staff need to understand that this means the most appropriate placement in a regular program to the maximum extent possible based on the IEP. Because it is individually determined, the least restrictive environment varies for different children. Likewise, the least restrictive environment for a given child can vary over time as the disability is remediated or worsens. A mainstreamed placement, in a regular program with services delivered by regular or special staff, is one type of integrated placement on the continuum of possible options. It represents the least restrictive environment for many children.

Following screening, evaluation and the determination that a child meets the eligibility criteria and has a disability, a plan to meet the child's individual needs for special education and related services is developed. In order to facilitate communication with other agencies which may cooperate in providing services and especially with LEAs or private schools which the children will eventually enter, it is recommended that programs become familiar with the format of the IEP used by the LEAs and use that format to foster coordination. However, the format of the IEP to be developed for children in Head Start can vary according to local option. It should be developed to serve as a working document for teachers and others providing services for a child.

It is recommended that the staff review the IEP of each child with a disability more frequently than the minimum once a year to keep the objectives and activities current.

It is ideal if a child can be mainstreamed in the full program with modifications of some of the small group, large group or individual program activities to meet his or her special needs and this should be the first option considered. However, this is not possible or realistic in some cases on a full-time basis. The IEP team needs to consider the findings and recommendations of the multidisciplinary evaluation team, observation and developmental assessment information from the Head Start staff and parents, parental information and desires, and the IEP to plan for the best situation for each child. Periodic reviews can change the degree to which a child can be mainstreamed during the program year. For example, a child with autism whose IEP called for part-time services in Head Start in the fall might improve so that by spring the hours could be extended.

If Head Start is not an appropriate placement to meet the child's needs according to the IEP, referral should be made to another agency.

Helpful specific information based on experience in Head Start is provided in manuals and resource materials on serving children with disabilities developed by ACYF and by technical assistance providers. They cover such aspects of developing and implementing the IEP as:

- Gathering data needed to develop the IEP;
- Preparing parents for the IEP conference;
- Writing IEPs useful to teachers; and
- Developing appropriate curriculum activities and home follow-up activities.

Guidance for Paragraph (j)

Programs are encouraged to offer parents assistance in noting how their child functions at home and in the neighborhood. Parents should be encouraged to contribute this valuable information to the staff for use in ongoing planning. Care should be taken to put parents at ease and to eliminate or explain specialized terminology. Comfortable settings, familiar meeting rooms and ample preparation can help lessen anxiety. The main purpose is to involve parents actively, not just to obtain their signature on the IEP.

It is important to involve the parents of children with disabilities in activities related to their child's unique needs, including the procurement and coordination of specialized services and follow-through on the child's treatment plan, to the extent possible. It is especially helpful for Head Start to assist parents in developing confidence, strategies and techniques to become effective advocates for their children and to negotiate complicated systems. Under IDEA, a federally-funded Parent Training and Information Program exists whereby parent training centers in each State provide information, support and assistance to parents enabling them to advocate for their child. Information regarding these centers should be given to parents of a child determined to have a disability. Because some parents will need to advocate for their children over a

number of years, they need to gain the confidence and skills to access resources and negotiate systems with increasing independence.

Some parents of children with disabilities are also disabled. Staff may need to adjust procedures for assisting parents who have disabilities to participate in their children's programs. Materials to assist in this effort are available from technical assistance providers.

Section 1308.20 Nutrition Services

Guidance for Paragraph (a)

Vocabulary and concept building, counting, learning place settings, social skills such as conversation and acceptable manners can be naturally developed at meal or snack time, thus enhancing children's skills. Children with disabilities often need planned attention to these areas.

The staff person who is responsible for nutrition and the disabilities services coordinator should work with the social services coordinator to help families access nutrition resources and services for children who are not able to learn or develop normally because of malnutrition.

The staff person who is responsible for nutrition and the disabilities services coordinator should alert staff to watch for practices leading to baby bottle caries. This is severe tooth decay caused by putting a baby or toddler to bed with a nursing bottle containing milk, juice or sugar water or letting the child carry around a bottle for long periods of time. The serious dental and speech problems this can cause are completely preventable.

In cases of severe allergies, staff should work closely with the child's physician or a medical consultant.

Section 1308.21 Parent Participation and Transition of Children From Head Start to Public School

Guidance for Paragraph (a)

Grantees should help parents understand the value of special early assistance for a child with a disability and reassure those parents who may fear that if their child receives special education services the child may always need them. This is not the experience in Head Start and most other preschool programs where the majority of children no longer receive special education after the preschool years. The disabilities coordinator needs to help parents understand that their active participation is of great importance in helping their children overcome or lessen the effects of disabilities and develop to their full potential.

The disabilities coordinator should help program staff deal realistically with parents of children who have unfamiliar disabilities by providing the needed information, training and contact with consultants or specialized agencies. The coordinator should ensure that staff carrying out family needs assessment or home visits do not overlook possible disabilities among younger siblings who should be referred for early evaluation and preventive actions.

Guidance for Paragraphs (b) and (c)

As most Head Start children will move into the public school system, disabilities coordinators need to work with the Head Start staff for early and ongoing activities designed to minimize discontinuity and stress for children and families as they move into a different system. As the ongoing advocates, parents will need to be informed and confident in communicating with school personnel and staff of social service and medical agencies. Disabilities coordinators need to ensure that the Head Start program:

- Provides information on services available for LEAs and other sources of services parents will have to access on their own, such as dental treatment;
- Informs parents of the differences between the two systems in role, staffing patterns, schedules, and focus;
- Provides opportunities for mutual visits by staff to one another's facilities to help plan appropriate placement;
- Familiarizes parents and staff of the receiving program's characteristics and expections;
- Provides early and mutually planned transfer of records with parent consent at times convenient for both systems;
- Provides information on services available under the Individuals With Disabilities Education Act, the federally-funded parent training centers and provisions for parent involvement and due process; and
- Provides opportunities for parents to confer with staff to express their ideas and needs so they have experience in participating in IEP and other conferences in an active, confident manner. Role playing has been found helpful.

It is strongly recommended that programs develop activities for smooth transition into Head Start from Part H infant/toddler programs funded under IDEA and from Head Start to kindergarten or other placement. In order to be effective, such plans must be developed jointly. They are advantageous for the children, parents, Part H programs, Head Start and LEAs. ACYF has developed materials useful for transition. American Indian programs whose children move into several systems, such as Bureau of Indian Affairs schools and public schools, need to prepare children and families in advance for the new situation. Plans

should be used as working documents and reviewed for annual update, so that the foundation laid in Head Start is maintained and strengthened.

SUBCHAPTER C—THE ADMINISTRATION ON AGING, OLDER AMERICANS PROGRAMS

PART 1321—GRANTS TO STATE AND COMMUNITY PROGRAMS ON AGING

Subpart A—Introduction

Subpart B—State Agency Responsibilities

Subpart C—Area Agency Responsibilities

Subpart D—Service Requirements

Subpart E—Hearing Procedures for State Agencies

AUTHORITY: 42 U.S.C. 3001 et seq.; Title III of the Older Americans Act, as Amended.

SOURCE: 53 FR 33766, Aug. 31, 1988, unless otherwise noted.

Subpart A—Introduction

§1321.1 Basis and purpose of this part.

(a) This part prescribes requirements State agencies shall meet to receive grants to develop comprehensive and coordinated systems for the delivery of supportive and nutrition services under title III of the Older Americans Act, as amended (Act). These requirements include:

(1) Designation and responsibilities of State agencies;

(2) State plans and amendments;

(3) Services delivery; and

(4) Hearing procedures for applicants for planning and services area designation.

(b) The requirements of this part are based on title III of the Act. Title III provides for formula grants to State agencies on aging, under approved State plans, to stimulate the development or enhancement of comprehensive and coordinated community-based systems resulting in a continuum of services to older persons with special emphasis on older individuals with the greatest economic or social need, with

particular attention to low-income minority individuals. A responsive community-based system of services shall include collaboration in planning, resource allocation and delivery of a comprehensive array of services and opportunities for all older Americans in the community. The intent is to use title III funds as a catalyst in bringing together public and private resources in the community to assure the provision of a full range of efficient, well coordinated and accessible services for older persons.

(c) Each State agency designates planning and service areas in the State, and makes a subgrant or contract under an approved area plan to one area agency in each planning and service area for the purpose of building comprehensive systems for older people throughout the State. Area agencies in turn make subgrants or contracts to service providers to perform certain specified functions.

§ 1321.3 Definitions.

Act means the Older Americans Act of 1965 as amended.

Altering or *renovating,* as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means making modifications to or in connection with an existing facility which are necessary for its effective use as a center. These may include renovation, repair, or expansion which is not in excess of double the square footage of the original facility and all physical improvements.

Constructing, as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means building a new facility, including the costs of land acquisition and architectural and engineering fees, or making modifications to or in connection with an existing facility which are in excess of double the square footage of the original facility and all physical improvements.

Department means the Department of Health and Human Services.

Direct services, as used in this part, means any activity performed to provide services directly to an individual older person by the staff of a service provider, an area agency, or a State agency in a single planning and service area State.

Fiscal year, as used in this part, means the Federal Fiscal Year.

Frail, as used in this part, means having a physical or mental disability, including having Alzheimer's disease or a related disorder with neurological or organic brain dysfunction, that restricts the ability of an individual to perform normal daily tasks or which threatens the capacity of an individual to live independently.

Human services, as used in § 1321.41(a)(1) of this part, with respect to criteria for designation of a statewide planning and service area, means social, health, or welfare services.

In-home service, as used in this part, includes: (a) Homemaker and home health aides; (b) visiting and telephone reassurance; (c) chore maintenance; (d) in-home respite care for families, including adult day care as a respite service for families; and (e) minor modification of homes that is necessary to facilitate the ability of older individuals to remain at home, and that is not available under other programs, except that not more than $150 per client may be expended under this part for such modification.

Means test, as used in the provison of services, means the use of an older person's income or resource to deny or limit that person's receipt of services under this part.

Official duties, as used in section 307(a)(12)(J) of the Act with respect to representatives of the Long-Term Care Ombudsman Program, means work pursuant to the Long-Term Care Ombudsman Program authorized by the Act or State law and carried out under the auspices and general direction of the State Long-Term Care Ombudsman.

Periodic, as used in sections 306(a)(6) and 307(a)(8) of the Act with respect to evaluations of, and public hearings on, activities carried out under State and area plans, means, at a minimum, once each fiscal year.

Reservation, as used in section 305(b)(4) of the Act with respect to the designation of planning and service areas, means any federally or State recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaskan Native

regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.

Service provider, as used in section 306(a)(1) of the Act with respect to the provison of supportive and nutrition services, means an entity that is awarded a subgrant or contract from an area agency to provide services under the area plan.

Severe disability, as used to carry out the provisions of the Act, means a severe chronic disability attributable to mental and/or physical impairment of an individual that:

(a) Is likely to continue indefinitely; and

(b) Results in substantial functional limitation in 3 or more of the following major life activities:

(1) Self-care,

(2) Receptive and expressive language,

(3) Learning,

(4) Mobility,

(5) Self-direction,

(6) Capacity for independent living, and

(7) Economic self-sufficiency.

§1321.5 Applicability of other regulations.

Several other regulations apply to all activities under this part. These include but are not limited to:

(a) 45 CFR part 16—Procedures of the Departmental Grant Appeals Board;

(b) 45 CFR part 74—Administration of Grants, except subpart N;

(c) 45 CFR part 80—Nondiscrimination under Programs Receiving Federal Assistance through the Department of Health and Human Services: Effectuation of title VI of the Civil Rights Act of 1964;

(d) 45 CFR part 81—Practice and Procedures for Hearings Under Part 80 of this title;

(e) 45 CFR part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Participation;

(f) 45 CFR part 91—Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance;

(g) 45 CFR part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

(h) 45 CFR part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities; and

(i) 5 CFR part 900, subpart F, Standards for a Merit System of Personnel Administration.

Subpart B—State Agency Responsibilities

§1321.7 Mission of the State agency.

(a) The Older Americans Act intends that the State agency on aging shall be the leader relative to all aging issues on behalf of all older persons in the State. This means that the State agency shall proactively carry out a wide range of functions related to advocacy, planning, coordination, interagency linkages, information sharing, brokering, monitoring and evaluation, designed to lead to the development or enhancement of comprehensive and coordinated community based systems in, or serving, communities throughout the State. These systems shall be designed to assist older persons in leading independent, meaningful and dignified lives in their own homes and communities as long as possible.

(b) The State agency shall designate area agencies on aging for the purpose of carrying out the mission described above for the State agency at the sub-State level. The State agency shall designate as its area agencies on aging only those sub-state agencies having the capacity and making the commitment to fully carry out the mission described for area agencies in §1321.53 below.

(c) The State agency shall assure that the resources made available to area agencies on aging under the Older Americans Act are used to carry out the mission described for area agencies in §1321.53 below.

§1321.9 Organization and staffing of the State agency.

(a) The State shall designate a sole State agency to develop and administer the State plan required under this part and serve as the effective visible advocate for the elderly within the State.

(b) The State agency shall have an adequate number of qualified staff to carry out the functions prescribed in this part.

(c) The State agency shall have within the State agency, or shall contract or otherwise arrange with another agency or organization, as permitted by section 307(a)(12)(A), an Office of the State Long-Term Care Ombudsman, with a full-time State ombudsman and such other staff as are appropriate.

(d) If a State statute establishes a State ombudsman program which will perform the functions of section 307(a)(12) of the Act, the State agency continues to be responsible to assure that all of the requirements of the Act for this program are met regardless of the State legislation or source of funds. In such cases, the Governor shall confirm this through an assurance in the State plan.

1321.11 State agency policies.

(a) The State agency on aging shall develop policies governing all aspects of programs operated under this part, including the ombudsman program whether operated directly by the State agency or under contract. These policies shall be developed in consultation with other appropriate parties in the State. The State agency is responsible for enforcement of these policies.

(b) The policies developed by the State agency shall address the manner in which the State agency will monitor the performance of all programs and activities initiated under this part for quality and effectiveness. In monitoring the ombudsman program, access to files, minus the identity of any complainant or resident of a long-term care facility, shall be available only to the director of the State agency on aging and one other senior manager of the State agency designated by the State director for this purpose. In the conduct of the monitoring of the ombudsman program, the confidentiality protections concerning any complainant or resident of a long term care facility as prescribed in section 307(a)(12) of the Act shall be strictly adhered to.

§1321.13 Advocacy responsibilities.

(a) The State agency shall:

(1) Review, monitor, evaluate and comment on Federal, State and local plans, budgets, regulations, programs, laws, levies, hearings, policies, and actions which affect or may affect older individuals and recommend any changes in these which the State agency considers to be appropriate;

(2) Provide technical assistance to agencies, organizations, associations, or individuals representing older persons; and

(3) Review and comment, upon request, on applications to State and Federal agencies for assistance relating to meeting the needs of older persons.

(b) No requirement in this section shall be deemed to supersede a prohibition contained in a Federal appropriation on the use of Federal funds to lobby the Congress.

§1321.15 Duration, format and effective date of the State plan.

(a) A State may use its own judgment as to the format to use for the plan, how to collect information for the plan, and whether the plan will remain in effect for two, three or four years.

(b) An approved State plan or amendment, as indentified in §1321.17, becomes effective on the date designated by the Commissioner.

(c) A State agency may not make expenditures under a new plan or amendment requiring approval, as identified in §1321.17 and §1321.19, until it is approved.

§1321.17 Content of State plan.

To receive a grant under this part, a State shall have an approved State plan as prescribed in section 307 of the Act. In addition to meeting the requirements of section 307, a State plan shall include:

(a) Identification by the State of the sole State agency that has been designated to develop and administer the plan.

(b) Statewide program objectives to implement the requirements under Title III of the Act and any objectives established by the Commissioner through the rulemaking process.

(c) A resource allocation plan indicating the proposed use of all title III

funds administered by a State agency, and the distribution of title III funds to each planning and service area.

(d) Identification of the geographic boundaries of each planning and service area and of area agencies on aging designated for each planning and service area, if appropriate.

(e) Provision of prior Federal fiscal year information related to low income minority and rural older individuals as required by sections 307(a) (23) and (29) of the Act.

(f) Each of the assurances and provisions required in sections 305 and 307 of the Act, and provisions that the State meets each of the requirements under §§ 1321.5 through 1321.75 of this part, and the following assurances as prescribed by the Commissioner:

(1) Each area agency engages only in activities which are consistent with its statutory mission as prescribed in the Act and as specified in State policies under § 1321.11;

(2) Preference is given to older persons in greatest social or economic need in the provision of services under the plan;

(3) Procedures exist to ensure that all services under this part are provided without use of any means tests;

(4) All services provided under title III meet any existing State and local licensing, health and safety requirements for the provision of those services;

(5) Older persons are provided opportunities to voluntarily contribute to the cost of services;

(6) Area plans shall specify as submitted, or be amended annually to include, details of the amount of funds expended for each priority service during the past fiscal year;

(7) The State agency on aging shall develop policies governing all aspects of programs operated under this part, including the manner in which the ombudsman program operates at the State level and the relation of the ombudsman program to area agencies where area agencies have been designated;

(8) The State agency will require area agencies on aging to arrange for outreach at the community level that identifies individuals eligible for assistance under this Act and other programs, both public and private, and informs them of the availability of assistance. The outreach efforts shall place special emphasis on reaching older individuals with the greatest economic or social needs with particular attention to low income minority individuals, including outreach to identify older Indians in the planning and service area and inform such older Indians of the availability of assistance under the Act.

(9) The State agency shall have and employ appropriate procedures for data collection from area agencies on aging to permit the State to compile and transmit to the Commissioner accurate and timely statewide data requested by the Commissioner in such form as the Commissioner directs; and

(10) If the State agency proposes to use funds received under section 303(f) of the Act for services other than those for preventive health specified in section 361, the State plan shall demonstrate the unmet need for the services and explain how the services are appropriate to improve the quality of life of older individuals, particularly those with the greatest economic or social need, with special attention to low-income minorities.

(11) Area agencies shall compile available information, with necessary supplementation, on courses of post-secondary education offered to older individuals with little or no tuition. The assurance shall include a commitment by the area agencies to make a summary of the information available to older individuals at multipurpose senior centers, congregate nutrition sites, and in other appropriate places.

(12) Individuals with disabilities who reside in a non-institutional household with and accompany a person eligible for congregate meals under this part shall be provided a meal on the same basis that meals are provided to volunteers pursuant to section 307(a)(13)(I) of the Act.

(13) The services provided under this part will be coordinated, where appropriate, with the services provided under title VI of the Act.

(14)(i) The State agency will not fund program development and coordinated activities as a cost of supportive services for the administration of area

plans until it has first spent 10 percent of the total of its combined allotments under Title III on the administration of area plans;

(ii) State and area agencies on aging will, consistent with budgeting cycles (annually, biannually, or otherwise), submit the details of proposals to pay for program development and coordination as a cost of supportive services, to the general public for review and comment; and

(iii) The State agency certifies that any such expenditure by an area agency will have a direct and positive impact on the enhancement of services for older persons in the planning and service area.

(15) The State agency will assure that where there is a significant population of older Indians in any planning and service area that the area agency will provide for outreach as required by section 306(a)(6)(N) of the Act.

§ 1321.19 Amendments to the State plan.

(a) A State shall amend the State plan whenever necessary to reflect:

(1) New or revised Federal statutes or regulations,

(2) A material change in any law, organization, policy or State agency operation, or

(3) Information required annually by sections 307(a) (23) and (29) of the Act.

(b) Information required by paragraph (a)(3) of this section shall be submitted according to guidelines prescribed by the Commissioner.

(c) If a State intends to amend provisions of its plan required under §§ 1321.17 (a) or (f), it shall submit its proposed amendment to the Commissioner for approval. If the State changes any of the provisions of its plan required under § 1321.17 (b) through (d), it shall amend the plan and notify the Commissioner. A State need only submit the amended portions of the plan.

§ 1321.21 Submission of the State plan or plan amendment to the Commissioner for approval.

Each State plan, or plan amendment which requires approval of the Commissioner, shall be signed by the Governor or the Governor's designee and submitted to the Commissioner to be considered for approval at least 45 calendar days before the proposed effective date of the plan or plan amendment.

§ 1321.23 Notification of State plan or State plan amendment approval.

(a) The Commissioner approves a State plan or State plan amendment by notifying the Governor or the Governor's designee in writing.

(b) When the Commissioner proposes to disapprove a State plan or amendment, the Commissioner notifies the Governor in writing, giving the reasons for the proposed disapproval, and informs the State agency that it has 60 days to request a hearing on the proposed disapproval following the procedures specified in subpart E of this part.

§ 1321.25 Restriction of delegation of authority to other agencies.

A State or area agency may not delegate to another agency the authority to award or administer funds under this part.

§ 1321.27 Public participation.

The State agency shall have a mechanism to obtain and shall consider the views of older persons and the public in developing and administering the State plan.

§ 1321.29 Designation of planning and service areas.

(a) Any unit of general purpose local government, region within a State recognized for area wide planning, metropolitan area, or Indian reservation may make application to the State agency to be designated as a planning and service area, in accordance with State agency procedures.

(b) A State agency shall approve or disapprove any application submitted under paragraph (a) of this section.

(c) Any applicant under paragraph (a) of this section whose application for designation as a planning and service area is denied by a State agency may appeal the denial to the State agency, under procedures specified by the State agency.

(d) If the State denies an applicant for designation as a planning and service area under paragraph (a) of this section, the State shall provide a hearing on the denial of the application, if requested by the applicant, as well as issue a written decision.

§ 1321.31 Appeal to Commissioner.

This section sets forth the procedures the Commissioner follows for providing hearings to applicants for designation as a planning and service area, under § 1321.29(a), whose application is denied by the State agency.

(a) Any applicant for designation as a planning and service area under § 1321.29(a) whose application is denied, and who has been provided a hearing and a written decision by the State agency, may appeal the denial to the Commissioner in writing within 30 days following receipt of a State's hearing decision.

(b) The Commissioner, or the Commissioner's designee, holds a hearing, and issues a written decision, within 60 days following receipt of an applicant's written request to appeal the State agency hearing decision to deny the applicant's request under § 1321.29(a).

(c) When the Commissioner receives an appeal, the Commissioner requests the State Agency to submit:

(1) A copy of the applicant's application for designation as a planning and service area;

(2) A copy of the written decision of the State; and

(3) Any other relevant information the Commissioner may require.

(d) The procedures for the appeal consist of:

(1) Prior written notice to the applicant and the State agency of the date, time and location of the hearing;

(2) The required attendance of the head of the State agency or designated representatives;

(3) An opportunity for the applicant to be represented by counsel or other representative; and

(4) An opportunity for the applicant to be heard in person and to present documentary evidence.

(e) The Commissioner may:

(1) Deny the appeal and uphold the decision of a State agency;

(2) Uphold the appeal and require a State agency to designate the applicant as a planning and service area; or

(3) Take other appropriate action, including negotiating between the parties or remanding the appeal to the State agency after initial findings.

(f) The Commissioner will uphold the decision of the State agency if it followed the procedures specified in § 1321.29, and the hearing decision is not manifestly inconsistent with the purpose of this part.

(g) The Commissioner's decision to uphold the decision of a State agency does not extend beyond the period of the approved State plan.

§ 1321.33 Designation of area agencies.

An area agency may be any of the types of agencies under section 305(c) of the Act. A State may not designate any regional or local office of the State as an area agency. However, when a new area agency on aging is designated, the State shall give right of first refusal to a unit of general purpose local government as required in section 305(b)(5)(B) of the Act. If the unit of general purpose local government chooses not to exercise this right, the State shall then give preference to an established office on aging as required in section 305(c)(5) of the Act.

§ 1321.35 Withdrawal of area agency designation.

(a) In carrying out section 305 of the Act, the State agency shall withdraw the area agency designation whenever it, after reasonable notice and opportunity for a hearing, finds that:

(1) An area agency does not meet the requirements of this part;

(2) An area plan or plan amendment is not approved;

(3) There is substantial failure in the provisions or administration of an approved area plan to comply with any provision of the Act or of this part or policies and procedures established and published by the State agency on aging; or

(4) Activities of the area agency are inconsistent with the statutory mission prescribed in the Act or in conflict with the requirement of the Act that it function only as an area agency on aging.

(b) If a State agency withdraws an area agency's designation under paragraph (a) of this section it shall:

(1) Provide a plan for the continuity of area agency functions and services in the affected planning and service area; and

(2) Designate a new area agency in the planning and service area in a timely manner.

(c) If necessary to ensure continuity of services in a planning and service area, the State agency may, for a period of up to 180 days after its final decision to withdraw designation of an area agency:

(1) Perform the responsibilities of the area agency; or

(2) Assign the responsibilities of the area agency to another agency in the planning and service area.

(d) The Commissioner may extend the 180-day period if a State agency:

(1) Notifies the Commissioner in writing of its action under paragraph (c) of this section;

(2) Requests an extension; and

(3) Demonstrates to the satisfaction of the Commissioner a need for the extension.

§ 1321.37 Intrastate funding formula.

(a) The State agency, after consultation with all area agencies in the State, shall develop and use an intrastate funding formula for the allocation of funds to area agencies under this part. The State agency shall publish the formula for review and comment by older persons, other appropriate agencies and organizations and the general public. The formula shall reflect the proportion among the planning and service areas of persons age 60 and over in greatest economic or social need with particular attention to low-income minority individuals. The State agency shall review and update its formula as often as a new State plan is submitted for approval.

(b) The intrastate funding formula shall provide for a separate allocation of funds received under section 303(f) for preventive health services. In the award of such funds to selected planning and service areas, the State agency shall give priority to areas of the State:

(1) Which are medically underserved; and

(2) In which there are large numbers of individuals who have the greatest economic and social need for such services.

(c) The State agency shall submit its intrastate formula to the Commissioner for review and comment. The intrastate formula shall be submitted separately from the State plan.

§ 1321.41 Single State planning and service area.

(a) The Commissioner will approve the application of a State which was, on or before October 1, 1980, a single planning and service area, to continue as a single planning and service area if the State agency demonstrates that:

(1) The State is not already divided for purposes of planning and administering human services; or

(2) The State is so small or rural that the purposes of this part would be impeded if the State were divided into planning and services areas; and

(3) The State agency has the capacity to carry out the responsibilities of an area agency, as specified in the Act.

(b) Prior to the Commissioner's approval for a State to continue as a single planning and service area, all the requirements and procedures in § 1321.29 shall be met.

(c) If the Commissioner approves a State's application under paragraph (a) this section:

(1) The Commissioner notifies the State agency to develop a single State planning and service area plan which meets the requirements of section 306 and 307 of the Act.

(2) A State agency shall meet all the State and area agency function requirements specified in the Act.

(d) If the Commissioner denies the application because a State fails to meet the criteria or requirements set forth in paragraphs (a) or (b) of this section, the Commissioner notifies the State that it shall follow procedures in section 305(A)(1)(E) of the Act to divide the State into planning and service areas.

§1321.43 Interstate planning and service area.

(a) Before requesting permission of the Commissioner to designate an interstate planning and service area, the Governor of each State shall execute a written agreement that specifies the State agency proposed to have lead responsibility for administering the programs within the interstate planning and service area and lists the conditions, agreed upon by each State, governing the administration of the interstate planning and service area.

(b) The lead State shall request permission of the Commissioner to designate an interstate planning and service area.

(c) The lead State shall submit the request together with a copy of the agreement as part of its State plan or as an amendment to its State plan.

(d) Prior to the Commissioner's approval for States to designate an interstate planning and service area, the Commissioner shall determine that all applicable requirements and procedures in §1321.29 and §1321.33 of this part, shall be met.

(e) If the request is approved, the Commissioner, based on the agreement between the States, increases the allotment of the State with lead responsibility for administering the programs within the interstate area and reduces the allotment(s) of the State(s) without lead responsibility by one of these methods:

(1) Reallotment of funds in proportion to the number of individuals age 60 and over for that portion of the interstate planning and service area located in the State without lead responsibility; or

(2) Reallotment of funds based on the intrastate funding formula of the State(s) without lead responsibility.

§1321.45 Transfer between congregate and home-delivered nutrition service allotments.

(a) A State agency, without the approval of the Commissioner, may transfer between allotments up to 30 percent of a State's separate allotments for congregate and home-delivered nutrition services.

(b) A State agency may apply to the Commissioner to transfer from one allotment to the other a portion exceeding 30 percent of a State's separate allotments for congregate and home-delivered nutrition services. A State agency desiring such a transfer of allotment shall:

(1) Specify the percent which it proposes to transfer from one allotment to the other;

(2) Specify whether the proposed transfer is for the entire period of a State plan or a protion of a plan period; and

(3) Specify the purpose of the proposed transfer.

§1321.47 Statewide non-Federal share requirements.

The statewide non-Federal share for State or area plan administration shall not be less than 25 percent of the funds usesd under this part. All services statewide, including ombudsman services and services funded under Title III–B, C, D, E and F, shall be funded on a statewide basis with a non-Federal share of not less than 15 percent. Matching requirements for individual area agencies are determined by the State agency.

§1321.49 State agency maintenance of effort.

In order to avoid a penalty, each fiscal year the State agency, to meet the required non-federal share applicable to its allotments under this part, shall spend under the State plan for both services and administration at least the average amount of State funds it spent under the plan for the three previous fiscal years. If the State agency spends less than this amount, the Commissioner reduces the State's allotments for supportive and nutrition services under this part by a percentage equal to the percentage by which the State reduced its expenditures.

§1321.51 Confidentiality and disclosure of information.

(a) A State agency shall have procedures to protect the confidentiality of information about older persons collected in the conduct of its responsibilities. The procedures shall ensure that no information about an order person, or obtained from an older person by a service provider or the State or area

agencies, is disclosed by the provider or agency in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal, State, or local monitoring agencies.

(b) A State agency is not required to disclose those types of information or documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act, 5 U.S.C. 552.

(c) A State or area agency on aging may not require a provider of legal assistance under this part to reveal any information that is protected by attorney client privilege.

§ 1321.52 Evaluation of unmet need.

Each State shall submit objectively collected and statistically valid data with evaluative conclusions concerning the unmet need for supportive services, nutrition services, and multipurpose senior centers gathered pursuant to section 307(a)(3)(A) of the Act to the Commissioner. The evaluations for each State shall consider all services in these categories regardless of the source of funding for the services. This information shall be submitted not later than June 30, 1989 and shall conform to guidance issued by the Commissioner.

Subpart C—Area Agency Responsibilities

§ 1321.53 Mission of the area agency.

(a) The Older Americans Act intends that the area agency on aging shall be the leader relative to all aging issues on behalf of all older persons in the planning and service area. This means that the area agency shall proactively carry out, under the leadership and direction of the State agency, a wide range of functions related to advocacy, planning, coordination, inter-agency linkages, information sharing, brokering, monitoring and evaluation, designed to lead to the development or enhancement of comprehensive and coordinated community based systems in, or serving, each community in the planning and service area. These systems shall be designed to assist older persons in leading independent, meaningful and dignified lives in their own homes and communities as long as possible.

(b) A comprehensive and coordinated community based system described in paragraph (a) of this section shall:

(1) Have a visible focal point of contact where anyone can go or call for help, information or referral on any aging issue;

(2) Provide a range of options:

(3) Assure that these options are readily accessible to all older persons: The independent, semi-dependent and totally dependent, no matter what their income;

(4) Include a commitment of public, private, voluntary and personal resources committed to supporting the system;

(5) Involve collaborative decision-making among public, private, voluntary, religious and fraternal organizations and older people in the community;

(6) Offer special help or targetted resources for the most vulnerable older persons, those in danger of losing their independence;

(7) Provide effective referral from agency to agency to assure that information or assistance is received, no matter how or where contact is made in the community;

(8) Evidence sufficient flexibility to respond with appropriate individualized assistance, especially for the vulnerable older person;

(9) Have a unique character which is tailored to the specific nature of the community;

(10) Be directed by leaders in the community who have the respect, capacity and authority necessary to convene all interested persons, assess needs, design solutions, track overall success, stimulate change and plan community responses for the present and for the future.

(c) The resources made available to the area agency on aging under the Older Americans Act are to be used to finance those activities necessary to achieve elements of a community based system set forth in paragraph (b) of this section. For the purpose of assuring access to information and services for older persons, the area agency

shall work with elected community officials in the planning and service area to designate one or more focal points on aging in each community, as appropriate. The area agency shall list designated focal points in the area plan. It shall be the responsibility of the area agency, with the approval of the State agency, to define ''community'' for the purposes of this section. Since the Older Americans Act defines focal point as a ''facility'' established to encourage the maximum collocation and coordination of services for older individuals, special consideration shall be given to developing and/or designating multi-purpose senior centers as community focal points on aging. The area agency on aging shall assure that services financed under the Older Americans Act in, or on behalf of, the community will be either based at, linked to or coordinated with the focal points designated. The area agency on aging shall assure access from the designated focal points to services financed under the Older Americans Act. The area agency on aging shall work with, or work to assure that community leadership works with, other applicable agencies and institutions in the community to achieve maximum collocation at, coordination with or access to other services and opportunities for the elderly from the designated community focal points. The area agency may not engage in any activity which is inconsistent with its statutory mission prescribed in the Act or policies prescribed by the State under § 1321.11.

§ 1321.55 Organization and staffing of the area agency.

(a) An area agency may be either:

(1) An agency whose single purpose is to administer programs for older persons; or

(2) A separate organizational unit within a multi-purpose agency which functions only for purposes of serving as the area agency on aging. Where the State agency on aging designates, as an area agency on aging, a separate organizational unit of a multipurpose agency which has been serving as an area agency, the State agency action shall not be subject to section 305(b)(5)(B) of the Act.

(b) The area agency, once designated, is responsible for providing for adequate and qualified staff to perform all of the functions prescribed in this part.

(c) The designated area agency continues to function in that capacity until either:

(1) The area agency informs the State agency that it no longer wishes to carry out the responsibilities of an area agency; or

(2) The State agency withdraws the designation of the area agency as provided in § 1321.35.

§ 1321.57 Area agency advisory council.

(a) *Functions of council.* The area agency shall establish an advisory council. The council shall carry out advisory functions which further the area agency's mission of developing and coordinating community-based systems of services for all older persons in the planning and service area. The council shall advise the agency relative to:

(1) Developing and administering the area plan;

(2) Conducting public hearings;

(3) Representing the interest of older persons; and

(4) Reviewing and commenting on all community policies, programs and actions which affect older persons with the intent of assuring maximum coordination and responsiveness to older persons.

(b) *Composition of council.* The council shall include individuals and representatives of community organizations who will help to enhance the leadership role of the area agency in developing community-based systems of services. The advisory council shall be made up of:

(1) More than 50 percent older persons, including minority individuals who are participants or who are eligible to participate in programs under this part;

(2) Representatives of older persons;

(3) Representatives of health care provider organizations, including providers of veterans' health care (if appropriate);

(4) Representatives of supportive services providers organizations;

(5) Persons with leadership experience in the private and voluntary sectors;

(6) Local elected officials; and
(7) The general public.

(c) *Review by advisory council.* The area agency shall submit the area plan and amendments for review and comment to the advisory council before it is transmitted to the State agency for approval.

§ 1321.59 Submission of an area plan and plan amendments to the State for approval.

The area agency shall submit the area plan and amendments to the State agency for approval following procedures specified by the State agency in the State policies prescribed by § 1321.11.

§ 1321.61 Advocacy responsibilities of the area agency.

(a) The area agency shall serve as the public advocate for the development or enhancement of comprehensive and coordinated community-based systems of services in each community throughout the planning and service area.

(b) In carrying out this responsibility, the area agency shall:

(1) Monitor, evaluate, and, where appropriate, comment on all policies, programs, hearings, levies, and community actions which affect older persons;

(2) Solicit comments from the public on the needs of older persons;

(3) Represent the interests of older persons to local level and executive branch officials, public and private agencies or organizations;

(4) Consult with and support the State's long-term care ombudsman program; and

(5) Undertake on a regular basis activities designed to facilitate the coordination of plans and activities with all other public and private organizations, including units of general purpose local government, with responsibilities affecting older persons in the planning and service area to promote new or expanded benefits and opportunities for older persons; and

(c) Each area agency on aging shall undertake a leadership role in assisting communities throughout the planning and service area to target resources from all appropriate sources to meet the needs of older persons with greatest economic or social need, with particular attention to low income minority individuals. Such activities may include location of services and specialization in the types of services must needed by these groups to meet this requirement. However, the area agency may not permit a grantee or contractor under this part to employ a means test for services funded under this part.

(d) No requirement in this section shall be deemed to supersede a prohibition contained in the Federal appropriation on the use of Federal funds to lobby the Congress; or the lobbying provision applicable to private nonprofit agencies and organizations contained in OMB Circular A–122.

Subpart D—Service Requirements

§ 1321.63 Purpose of services allotments under Title III.

(a) Title III of the Older Americans Act authorizes the distribution of Federal funds to the State agency on aging by formula for the following categories of services:

(1) Supportive services;
(2) Congregate meals services;
(3) Home delivered meals services;
(4) In-home services;
(5) Ombudsman services;
(6) Special needs services;
(7) Elder abuse services;
(8) Preventive health services; and
(9) Outreach services.

Funds authorized under these categories are for the purpose of assisting the State and its area agencies to develop or enhance for older persons comprehensive and coordinated community based systems as described in § 1321.53(b) throughout the State.

(b) Except for ombudsman services, State agencies on aging will award the funds made available under paragraph (a) of this section to designated area agencies on aging according to the formula determined by the State agency. Except where a waiver is granted by the State agency, area agencies shall award these funds by grant or contract to community services provider agencies and organizations. All funds awarded to area agencies under this part are for the purpose of assisting area agencies to develop or enhance comprehensive and coordinated community based systems for older persons

in, or serving, communities throughout the planning and service area.

§ 1321.65 Responsibilities of service providers under area plans.

As a condition for receipt of funds under this part, each area agency on aging shall assure that providers of services shall:

(a) Provide the area agency, in a timely manner, with statistical and other information which the area agency requires in order to meet its planning, coordination, evaluation and reporting requirements established by the State under § 1321.13;

(b) Specify how the provider intends to satisfy the service needs of low-income minority individuals in the area served, including attempting to provide services to low-income minority individuals at least in proportion to the number of low-income minority older persons in the population serviced by the provider;

(c) Provide recipients with an opportunity to contribute to the cost of the service as provided in § 1321.67;

(d) With the consent of the older person, or his or her representative, bring to the attention of appropriate officials for follow-up, conditions or circumstances which place the older person, or the household of the older person, in imminent danger;

(e) Where feasible and appropriate, make arrangements for the availability of services to older persons in weather related emergencies;

(f) Assist participants in taking advantage of benefits under other programs; and

(g) Assure that all services funded under this part are coordinated with other appropriate services in the community, and that these services do not constitute an unnecessary duplication of services provided by other sources.

§ 1321.67 Service contributions.

(a) For services rendered with funding under the Older Americans Act, the area agency on aging shall assure that each service provider shall:

(1) Provide each older person with an opportunity to voluntarily contribute to the cost of the service;

(2) Protect the privacy of each older person with respect to his or her contributions; and

(3) Establish appropriate procedures to safeguard and account for all contributions.

(b) Each service provider shall use supportive services and nutrition services contributions to expand supportive services and nutrition services respectively. To that end, the State agency shall:

(1) Permit service providers to follow either the addition alternative or the cost sharing alternatives as stated in 45 CFR 92.25(g) (2) and (3); or

(2) A combination of the two alternatives.

(c) Each service provider under the Older Americans Act may develop a suggested contribution schedule for services provided under this part. In developing a contribution schedule, the provider shall consider the income ranges of older persons in the community and the provider's other sources of income. However, means tests may not be used for any service supported with funds under this part. State agencies, in developing State eligibility criteria for in-home services under section 343 of the Act, may not include a means test as an eligibility criterion.

(d) A service provider that receives funds under this part may not deny any older person a service because the older person will not or cannot contribute to the cost of the service.

§ 1321.69 Service priority for frail, homebound or isolated elderly.

(a) Persons age 60 or over who are frail, homebound by reason of illness or incapacitating disability, or otherwise isolated, shall be given priority in the delivery of services under this part.

(b) The spouse of the older person, regardless of age or condition, may receive a home-delivered meal if, according to criteria determined by the area agency, receipt of the meal is in the best interest of the homebound older person.

§ 1321.71 Legal assistance.

(a) The provisions and restrictions in this section apply only to legal assistance providers and only if they are providing legal assistance under section 307(a)(15) of the Act.

(b) Nothing in this section is intended to prohibit any attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

(c) The area agency shall award funds to the legal assistance provider(s) that most fully meet the standards in this subsection. The legal assistance provider(s) shall:

(1) Have staff with expertise in specific areas of law affecting older persons in economic or social need, for example, public benefits, institutionalization and alternatives to institutionalization;

(2) Demonstrate the capacity to provide effective administrative and judicial representation in the areas of law affecting older persons with economic or social need;

(3) Demonstrate the capacity to provide support to other advocacy efforts, for example, the long-term care ombudsman program;

(4) Demonstrate the capacity to provide legal services to institutionalized, isolated, and homebound older individuals effectively; and

(5) Demonstrate the capacity to provide legal assistance in the principal language spoken by clients in areas where a significant number of clients do not speak English as their principal language.

(d) A legal assistance provider may not require an older person to disclose information about income or resources as a condition for providing legal assistance under this part.

(e) A legal assistance provider may ask about the person's financial circumstances as a part of the process of providing legal advice, counseling and representation, or for the purpose of identifying additional resources and benefits for which an older person may be eligible.

(f) A legal assistance provider and its attorneys may engage in other legal activities to the extent that there is no conflict of interest nor other interference with their professional responsibilities under this Act.

(g) No provider shall use funds received under the Act to provide legal assistance in a fee generating case unless other adequate representation is unavailable or there is an emergency requiring immediate legal action. All providers shall establish procedures for the referral of fee generating cases.

(1) ''Fee generating case'' means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds, or from the opposing party.

(2) Other adequate representation is deemed to be unavailable when:

(i) Recovery of damages is not the principal object of the client; or

(ii) A court appoints a provider or an employee of a provider pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction; or

(iii) An eligible client is seeking benefits under title II of the Social Security Act, 42 U.S.C. 401, *et seq.,* Federal Old Age, Survivors, and Disability Insurance Benefits; or title XVI of the Social Security Act, 42 U.S.C. 1381, *et seq.,* Supplemental Security Income for Aged, Blind, and Disabled.

(3) A provider may seek and accept a fee awarded or approved by a court or administrative body, or included in a settlement.

(4) When a case or matter accepted in accordance with this section results in a recovery of damages, other than statutory benefits, a provider may accept reimbursement for out-of-pocket costs and expenses incurred in connection with the case or matter.

(h) A provider, employee of the provider, or staff attorney shall not engage in the following prohibited political activities:

(1) No provider or its employees shall contribute or make available Older Americans Act funds, personnel or equipment to any political party or association or to the campaign of any candidate for public or party office; or for use in advocating or opposing any ballot measure, initiative, or referendum;

(2) No provider or its employees shall intentionally identify the title III program or provider with any partisan or nonpartisan political activity, or with the campaign of any candidate for public or party office;

(3) While engaged in legal assistance activities supported under the Act, no attorney shall engage in any political activity;

(i) No funds made available under the Act shall be used for lobbying activities, including but not limited to any activities intended to influence any decision or activity by any nonjudicial Federal, State or local individual or body. Nothing in this section is intended to prohibit an employee from:

(1) Communicating with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies;

(2) Informing a client about a new or proposed statute, executive order, or administrative regulation;

(3) Responding to an individual client's request for advice only with respect to the client's own communications to officials unless otherwise prohibited by the Older Americans Act, title III regulations or other applicable law. This provision does not authorize publication of lobbying materials or training of clients on lobbying techniques or the composition of a communication for the client's use; or

(4) Making direct contact with the area agency for any purpose;

(5) Providing a client with administrative representation in adjudicatory or rulemaking proceedings or negotiations, directly affecting that client's legal rights in a particular case, claim or application;

(6) Communicating with an elected official for the sole purpose of bringing a client's legal problem to the attention of that official; or

(7) Responding to the request of a public official or body for testimony, legal advice or other statements on legislation or other issues related to aging; provided that no such action will be taken without first obtaining the written approval of the responsible area agency.

(j) While carrying out legal assistance activities and while using resources provided under the Act, no provider or its employees shall:

(1) Participate in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation;

(2) Encourage, direct, or coerce others to engage in such activities; or

(3) At any time engage in or encourage others to engage in:

(i) Any illegal activity; or

(ii) Any intentional identification of programs funded under the Act or recipient with any political activity.

(k) None of the funds made available under the Act may be used to pay dues exceeding $100 per recipient per annum to any organization (other than a bar association), a purpose or function of which is to engage in activities prohibited under these regulations unless such dues are not used to engage in activities for which Older Americans Act funds cannot be used directly.

§ 1321.73 Grant related income under Title III–C.

States and sub-grantees must require that their subgrantees' grant related income be used in either the matching or cost sharing alternative in 45 CFR 92.25(g)(2) or the additive alternative in § 92.25(g)(3) or a combination of the two. The deductive alternative described in § 92.25(g)(1) is not permitted.

§ 1321.75 Licenses and safety.

The State shall ensure:

(a) That, in making awards for multipurpose senior center activities, the area agency will ensure that the facility complies with all applicable State and local health, fire, safety, building, zoning and sanitation laws, ordinances or codes; and

(b) The technical adequacy of any proposed alteration or renovation of a multipurpose senior center assisted under this part, by requiring that any alteration or renovation of a multipurpose senior center that affects the load bearing members of the facility is structurally sound and complies with all applicable local or State ordinances, laws, or building codes.

Subpart E—Hearing Procedures for State Agencies

§ 1321.77 Scope.

(a) Hearing procedures for State plan disapproval, as provided for in section 307(c) and section 307(d) of the Act are subject to the previsions of 45 CFR part 213 with the following exceptions:

(1) Section 213.1(a); §213.32(d); and §213.33 do not apply.

(2) Reference to SRS Hearing Clerk shall be read to mean HHS Hearing Clerk.

(3) References to Administrator shall be read to mean Commissioner on Aging.

(b) Instead of the scope described in §213.1(a), this subpart governs the procedures and opportunity for a hearing on:

(1) Disapproval of a State plan or amendment:

(2) Determination that a State agency does not meet the requirements of this part:

(3) Determination that there is a failure in the provisions or the administration of an approved plan to comply substantially with Federal requirements, including failure to comply with any assurance required under the Act or under this part.

§ 1321.79 When a decision is effective.

(a) The Commissioner's decision specifies the effective date for AoA's reduction and withholding of the State's grant. This effective date may not be earlier than the date of the Commissioner's decision or later than the first day of the next calendar quarter.

(b) The decision remains in effect unless reversed or stayed on judicial appeal, or until the agency or the plan is changed to meet all Federal requirements, except that the Commissioner may modify or set aside his or her decision before the record of the proceedings under this subpart is filed in court.

§ 1321.81 How the State may appeal.

A State may appeal the final decision of the Commissioner disapproving the State plan or plan amendment, finding of noncompliance, or finding that a State agency does not meet the requirements of this part to the U.S. Court of Appeals for the circuit in which the State is located. The State shall file the appeal within 30 days of the Commissioner's final decision.

§ 1321.83 How the Commissioner may reallot the State's withheld payments.

The Commissioner disburses funds withheld from the State directly to any public or nonprofit private organization or agency, or political subdivision of the State that has the authority and capacity to carry out the functions of the State agency and submits a State plan which meets the requirements of this part and which contains an agreement to meet the non-federal share requirements.

PART 1326—GRANTS TO INDIAN TRIBES FOR SUPPORT AND NUTRITION SERVICES

Sec.

AUTHORITY: 42 U.S.C. 3001; Title VI, Part A of the Older Americans Act.

SOURCE: 53 FR 33774, Aug. 31, 1988, unless otherwise noted.

§ 1326.1 Basis and purpose of this part.

This program was established to meet the unique needs and circumstances of American Indian elders on Indian reservations. This part implements title VI (part A) of the Older Americans Act, as amended, by establishing the requirements that an Indian tribal organization shall meet in order to receive a grant to promote the delivery of services for older Indians that are comparable to services provided under Title III. This part also prescribes application and hearing requirements and procedures for these grants.

§1326.3 Definitions.

Acquiring, as used in section 307(a)(14) of the Act, means obtaining ownership of an existing facility in fee simple or by lease for 10 years or more for use as a multipurpose senior center.

Altering or *renovating,* as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means making modifications to or in connection with an existing facility which are necessary for its effective use as a center. These may include renovation, repair, or expansion which is not in excess of double the square footage of the original facility and all physical improvements.

Budgeting period, as used in §1326.19 of this part, means the intervals of time into which a period of assistance (project period) is divided for budgetary and funding purposes.

Constructing, as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means building a new facility, including the costs of land acquisition and architectural and engineering fees, or making modifications to or in connection with an existing facility which are in excess of double the square footage of the original facility and all physical improvements.

Department, means the Department of Health and Human Services.

Indian reservation, means the reservation of any Federally recognized Indian tribe, including any band, nation, pueblo, or rancheria, any former reservation in Oklahoma, any community on non-trust land under the jurisdiction of an Indian tribe, including a band, nation, pueblo, or rancheria, with allotted lands, or lands subject to a restriction against alienation imposed by the United States, and Alaskan Native regions established, pursuant to the Alaska Native Claims Settlement Act (84 Stat. 688).

Indian tribe, means any Indian tribe, band, nation, or organized group or community, including any Alaska Native Village, regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450b).

Means test, as used in the provision of services, means the use of an older Indian's income or resources to deny or limit that person's receipt of services under this part.

Older Indians, means those individuals who have attained the minimum age determined by the tribe for services.

Project period, as used in §1326.19 of this part, means the total time for which a project is approved for support, including any extensions.

Service area, as used in §1326.9(b) and elsewhere in this part, means that geographic area approved by the Commissioner in which the tribal organization provides supportive and nutritional services to older Indians residing there. A service area may include all or part of the reservation or any portion of a county or counties which has a common boundary with the reservation. A service area may also include a noncontiguous area if the designation of such an area will further the purpose of the Act and will provide for more effective administration of the program by the tribal organization.

Service provider, means any entity that is awarded a subgrant or contract from a tribal organization to provide services under this part.

Tribal organization, as used in §1326.7 and elsewhere in this part, means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities. Provided that in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each Indian tribe shall be a prerequisite to the letting or making of the contract or grant (25 U.S.C. 450b).

§ 1326.5 Applicability of other regulations.

The following regulations in title 45 of the Code of Federal Regulations apply to all activities under this part:

(a) Part 16—Procedures of the Departmental Grant Appeals Board;

(b) Part 74—Administration of Grants;

(c) Part 75—Informal Grant Appeals Procedures;

(d) Part 80—Nondiscrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services: Effectuation of title VI of the Civil Rights Act of 1964;

(e) Part 81—Practice and Procedure for Hearings under part 80 of this Title;

(f) Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Benefits from Federal Financial Participation; and

(g) Part 91—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS.

§ 1326.7 Confidentiality and disclosure of information.

A tribal organization shall have confidentiality and disclosure procedures as follows:

(a) A tribal organization shall have procedures to ensure that no information about an older Indian or obtained from an older Indian by any provider of services is disclosed by the provider of such services in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal or tribal monitoring agencies.

(b) A tribal organization is not required to disclose those types of information or documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act, 5 U.S.C. 552.

§ 1326.9 Contributions.

(a) Each tribal organization shall:

(1) Provide each older Indian with a free and voluntary opportunity to contribute to the cost of the service;

(2) Protect the privacy of each older Indian with respect to his or her contribution;

(3) Establish appropriate procedures to safeguard and account for all contributions;

(4) Use all services contributions to expand comprehensive and coordinated services systems supported under this part, while using nutrition services contributions only to expand services as provided under section 307(a)(13)(c)(ii) of the Act.

(b) Each tribal organization may develop a suggested contribution schedule for services provided under this part. In developing a contribution schedule, the tribal organization shall consider the income ranges of older Indians in the service area and the tribal organization's other sources of income. However, means tests may not be used.

(c) A tribal organization that receives funds under this part may not deny any older Indian a service because the older Indian will not or cannot contribute to the cost of the service.

§ 1326.11 Prohibition against supplantation.

A tribal organization shall ensure that the activities provided under a grant under this part will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

§ 1326.13 Supportive services.

(a) A tribal organization may provide any of the supportive services mentioned under title III of the Older Americans Act, and any other supportive services that are necessary for the general welfare of older Indians.

(b) If an applicant elects to provide multipurpose senior center activities or uses any of the funds under this part for acquiring, altering or renovating a multipurpose senior center facility, it shall comply with the following requirements:

(1) The tribal organization shall comply with all applicable local health, fire, safety, building, zoning and sanitation laws, ordinances or codes.

(2) The tribal organization shall assure the technical adequacy of any proposed alteration or renovation of a multipurpose senior centers assisted

under this part. The tribal organization assures technical adequacy by requiring that any alteration or renovation of a multipurpose senior center that affects the load bearing members of the facility is structurally sound and complies with all applicable local or State ordinances, laws, or building codes.

(c) If an applicant elects to provide legal services, it shall substantially comply with the requirements in § 1321.71 and legal services providers shall comply fully with the requirements in §§ 1321.71(c) through 1321.71(p).

§ 1326.15 Nutrition services.

(a) In addition to providing nutrition services to older Indians, a tribal organization may:

(1) Provide nutrition services to the spouses of older Indians;

(2) Provide nutrition services to nonelderly handicapped or disabled Indians who reside in housing facilities occupied primarily by the elderly, at which congregate nutrition services are provided;

(3) Offer a meal, on the same basis as meals are provided to older Indians, to individuals providing volunteer services during meal hours; and

(4) Provide a meal to individuals with disabilities who reside in a non-institutional household with and accompany a person eligible for congregate meals under that part.

(b) Each tribal organization may receive cash payments in lieu of donated foods for all or any portion of its funding available under section 311(a)(4) of the Act. To receive cash or commodities, the tribal organization shall have an agreement with the U.S. Department of Agriculture's Food and Nutrition Service (FNS) to be a distributing agency.

(c) Where applicable, the tribal organization shall work with agencies responsible for administering other programs to facilitate participation of older Indians.

§ 1326.17 Access to information.

A tribal organization shall:

(a) Establish or have a list of all services that are available to older Indians in the service area,

(b) Maintain a list of services needed or requested by the older Indians; and

(c) Provide assistance to older Indians to help them take advantage of available services.

§ 1326.19 Application requirements.

A tribal organization shall have an approved application. The application shall be submitted as prescribed in section 604 of the Act and in accordance with the Commissioner's instructions for the specified project and budget periods. The application shall provide for:

(a) Program objectives, as set forth in section 604(a)(5) of the Act, and any objectives established by the Commissioner.

(b) A description of the geographic boundaries of the service area proposed by the tribal organization:

(c) Documentation of the ability of the tribal organization to deliver supportive and nutrition services to older Indians, or documentation that the tribal organization has effectively administered supportive and nutrition services within the last 3 years;

(d) Assurances as prescribed by the Commissioner that:

(1) A tribal organization represents at least 50 individuals who have attained 60 years of age or older;

(2) A tribal organization shall comply with all applicable State and local license and safety requirements for the provision of those services;

(3) If a substantial number of the older Indians residing in the service area are of limited English-speaking ability, the tribal organization shall utilize the services of workers who are fluent in the language spoken by a predominant number of older Indians;

(4) Procedures to ensure that all services under this part are provided without use of any means tests;

(5) A tribal organization shall comply with all requirements set forth in § 1326.7 through 1326.17; and

(6) The services provided under this part will be coordinated, where applicable, with services provided under title III of the Act.

(e) A tribal resolution(s) authorizing the tribal organization to apply for a grant under this part; and

(f) Signature by the principal official of the tribe.

§ 1326.21 Application approval.

(a) Approval of any application under section 604(e) of the Act, shall not commit the Commissioner in any way to make additional, supplemental, continuaton, or other awards with respect to any approved application or portion thereof.

(b) The Commissioner may give first priority in awarding grants to grantees which have effectively administered such grants in the prior year.

§ 1326.23 Hearing procedures.

In meeting the requirements of section 604(d)(3) of the Act, if the Commissioner disapproves an application from an eligible tribal organization, the tribal organization may file a written request for a hearing with the Commissioner.

(a) The request shall be postmarked or delivered in person within 30 days of the date of the disapproval notice. If it requests a hearing, the tribal organization shall submit to the Commissioner, as part of the request, a full written response to each objection specified in the notice of disapproval, including the pertinent facts and reasons in support of its response, and any and all documentation to support its position. Service of the request shall also be made on the individual(s) designated by the Commissioner to represent him or her.

(b) The Administration on Aging shall have the opportunity to respond with 30 days to the merits of the tribal organization's request.

(c) The Commissioner notifies the tribal organization in writing of the date, time and place for the hearing.

(d) The hearing procedures include the right of the tribal organization to:

(1) A hearing before the Commissioner or an official designated by the Commissioner;

(2) Be heard in person or to be represented by counsel, at no expense to the Administration on Aging;

(3) Present written evidence prior to and at the hearing, and present oral evidence at the hearing if the Commissioner or designated official decides that oral evidence is necessary for the proper resolution of the issues involved, and

(4) Have the staff directly responsible for reviewing the application either present at the hearing, or have a deposition from the staff, whichever the Commissioner or designated official decides.

(e) The Commissioner or designated official conducts a fair and impartial hearing, takes all necessary action to avoid delay and to maintain order and has all powers necessary to these ends.

(f) Formal rules of evidence do not apply to the hearings.

(g) The official hearing transcript together with all papers, documents, exhibits, and requests filed in the proceedings, including rulings, constitutes the record for decision.

(h) After consideration of the record, the Commissoner or designated official issues a written decision, based on the record, which sets forth the reasons for the decision and the evidence on which it was based. The decision is issued within 60 days of the date of the hearing, constitutes the final administrative action on the matter and is promptly mailed to the tribal organization.

(i) Either the tribal organization or the staff of the Administration on Aging may request for good cause an extension of any of the time limits specified in this section.

PART 1328—GRANTS FOR SUPPORTIVE AND NUTRITIONAL SERVICES TO OLDER HAWAIIAN NATIVES

Sec.

AUTHORITY: 42 U.S.C. 3001; Title VI Part B of the Older Americans Act.

SOURCE: 53 FR 33777, Aug. 31, 1988, unless otherwise noted.

§1328.1 Basis and purpose of this part.

This program was established to meet the unique needs and circumstances of Older Hawaiian Natives. This part implements title VI (part B) of the Older Americans Act, as amended, by establishing the requirements that a public or nonprofit private organization shall meet in order to receive a grant to promote the delivery of services for older Hawaiian Natives that are comparable to services provided under title III. This part also prescribes application and hearing requirements and procedures for these agrants.

§1328.3 Definitions.

Acquiring, as used in section 307(a)(14) of the Act, means obtaining ownership of an existing facility in fee simple or by lease of 10 years or more for use as a multipurpose senior center.

Act, means the Older Americans Act of 1965, as amended.

Altering or *renovating,* as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means making modifications to or in connection with an existing facility which are necessary for its effective use as a center. These may include renovation, repair, or expansion which is not in excess of double the square footage of the original facility and all physical improvements.

Budgeting period, as used in §1328.19 of this part, means the intervals of time into which a period of assistance (project period) is divided for budgetary and funding purposes.

Constructing, as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means building a new facility, including the costs of land acquisition and architectural and engineering fees, or making modificaitons to or in connection with an existing facility which are in excess of double the square footage of the original facility and all physical improvements.

Department, means the Department of Health and Human Services.

Eligible organization, means a public or nonprofit private organization having the capacity to provide services under this part for older Hawaiian Natives.

Grantee, as used in this part, means an eligible organization that has received funds to provide services to older Hawaiians.

Hawaiian Native, as used in this part, means any individual any of whose ancestors were native of the area which consists of the Hawaiian Islands prior to 1778.

Means test, as used in the provision of services, means the use of an older Hawaiian Native's income or resources to deny or limit that person receipt of services under this part.

Older Hawaiian, means any individual, age 60 or over, who is an Hawaiian Native.

Project period, as used in §1328.19 of this part, means the total time for which a project is approved for support, including any extensions.

Service area, as used in §1328.9(b) and elsewhere in this part, means that geographic area approved by the Commissioner in which the grantee provides supportive and nutritional services to older Hawaiian Natives residing there.

§1328.5 Applicability of other regulations.

The following regulations in title 45 of the Code of Federal Regulations apply to all activities under this part:

(a) Part 16-Procedures of the Departmental Grant Appeals Board;

(b) Part 74-Administration of Grants;

(c) Part 75-Informal Grant Appeals Procedures;

(d) Part 80-Nondiscrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services: Effectuation of title VI of the Civil Rights Act of 1964;

(e) Part 81-Practice and procedures for hearings under part 80;

(f) Part 84-Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Benefits from Federal Financing Participation; and

(g) Part 91-Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS.

§1328.7 Confidentiality and disclosure of information.

A grantee shall have confidentiality and disclosure procedures as follows:

(a) The grantee shall have procedures to ensure that no information about an older Hawaiian Native or obtained from an older Hawaiian Native is disclosed in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal monitoring agencies.

(b) A grantee is not required to disclose those types of information or documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act, 5 U.S.C. 552.

§ 1328.9 Contributions.

(a) Each grantee shall:

(1) Provide each older Hawaiian Native with a free and voluntary opportunity to contribute to the cost of the service;

(2) Protect the privacy of each older Hawaiian Native with respect to his or her contribution;

(3) Establish appropriate procedures to safeguard and account for all contributions;

(4) Use all supportive services contributions to expand the services provided under this part; and

(5) Use all nutrition services contributions only to expand services as provided under section 307(a)(13)(c)(ii) of the Act.

(b) Each grantee may develop a suggested contribution schedule for services provided under this part. In developing a contribution schedule, the grantee shall consider the income ranges of older Hawaiian Natives in the service area and the grantee's other sources of income. However, means tests may not be used.

(c) A grantee may not deny any older Hawaiian a service because the older Hawaiian will not or cannot contribute to the cost of the service.

§ 1328.11 Prohibition against supplantation.

A grantee shall ensure that the activities provided under a grant under this part will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

§ 1328.13 Supportive services.

(a) A grantee may provide any of the supportive services specified under title III of the Older Americans Act and any other supportive services, approved in the grantee's application, that are necessary for the general welfare of older Hawaiian Natives.

(b) If a grantee elects to provide multipurpose senior center activities or uses any of the funds under this part for acquiring, altering or renovating a multipurpose senior center facility, it shall comply with the following requirements:

(1) The grantee shall comply with all applicable local health, fire, safety, building, zoning and sanitation laws, ordinances or codes.

(2) The grantee shall assure the technical adequacy of any proposed alteration or renovation of a multipurpose senior center assisted under this part. The grantee shall assure technical adequacy by requiring that any alteration or renovation of a multipurpose senior center that affects the load bearing members of the facility is structurally sound and complies with all applicable local or State ordinances, laws, or building codes.

(c) If a grantee elects to provide legal services, it shall substantially comply with the requirements in § 1321.71 and legal services providers shall comply fully with the requirements in §§ 1321.71(c) through 1321.71(p).

§ 1328.15 Nutrition services.

(a) In addition to providing nutrition services to older Hawaiian Natives, a grantee may:

(1) Provide nutrition services to the spouses of older Hawaiian Natives;

(2) Provide nutrition services to nonelderly handicapped or disabled Hawaiian Natives who reside in housing facilities occupied primarily by the elderly, at which congregate nutrition services are provided;

(3) Offer a meal, on the same basis as meals are provided to older Hawaiian Natives, to individuals providing volunteer services during meal hours; and

(4) Provide a meal to individuals with disabilities who reside in a non-institutional household with and accompany a person eligible for congregate meals under that part.

(b) Each grantee may receive cash payments in lieu of donated foods for all or any portion of its funding available under section 311(a)(4) of the Act. To receive cash or commodities, the grantee shall have an agreement with the U.S. Department of Agriculture's Food and Nutrition Service (FNS) to be a distributing agency.

(c) Where applicable, the grantee shall work with agencies responsible for administering other programs to facilitate participation of older Hawaiian Natives.

§ 1328.17 Access to information.

A grantee shall:

(a) Establish or have a list of all services that are available to older Hawaiian Natives in the service area;

(b) Maintain a list of services needed or requested by the older Hawaiians; and

(c) Provide assistance to older Hawaiian Natives to help them take advantage of available services.

§ 1328.19 Application requirements.

To receive funds under this part, an eligible organization shall submit an application as prescribed in section 623 of the Act and in accordance with the Commissioner's instructions for the specified project and budget periods. The application shall provide for:

(a) Program objectives, as set forth in section 623(a)(6) of the Act, and any objectives established by the Commissioner;

(b) A description of the geographic boundaries of the service area proposed by the eligible organization;

(c) Documentation of the organization's ability to serve older Hawaiian Natives;

(d) Assurances as prescribed by the Commissioner that:

(1) The eligible organization represents at least 50 older Hawaiian Natives who have attained 60 years of age or older;

(2) The eligible organization shall conduct all activities on behalf of older Hawaiian natives in close coordination with the State agency and Area Agency on Aging:

(3) The eligible organization shall comply with all applicable State and local license and safety requirements for the provision of those services;

(4) The eligible organization shall ensure that all services under this part are provided without use of any means tests;

(5) The eligible organization shall comply with all requirements set forth in §§ 1328.7 through 1328.17; and

(6) The services provided under this part will be coordinated, where applicable, with services provided under title III of the Act.

(e) Signature by the principal official of the eligible organization.

§ 1328.21 Application approval.

(a) Approval of any application under section 623(d) of the Act, shall not commit the Commissioner in any way to make additional, supplemental, continuation, or other awards with respect to any approved application or portion thereof.

(b) The Commissioner may give first priority in awarding grants to eligible applicant organizations that have prior experience in serving Hawaiian Natives, particularly older Hawaiian Natives.

§ 1328.23 Hearing procedures.

In accordance with section 623(c)(3) of the Act, if the Commissioner disapproves an application from an eligible organization, the organization may file a written request for a hearing with the Commissioner.

(a) The request shall be postmarked or delivered in person within 30 days of the date of the disapproval notice. If it requests a hearing, the organization shall submit to the Commissioner, as part of the request, a full written response to each objection specified in the notice of disapproval, including the pertinent facts and reasons in support of its response, and any and all documentation to support its position. Service of the request shall also be made on the individual(s) designated by the Commissioner to represent him or her.

(b) The Administration on Aging shall have the opportunity to respond within 30 days to the merits of the organization's request.

(c) The Commissioner notifies the organization in writing of the date, time and place for the hearing.

(d) The hearing procedures include the right of the organization to:

(1) A hearing before the Commissioner or an official designated by the Commissioner;

(2) Be heard in person or to be represented by counsel, at no expense to the Administration on Aging;

(3) Present written evidence prior to and at the hearing, and present oral evidence at the hearing if the Commissioner or the Commissioner's designee decides that oral evidence is necessary for the proper resolution of the issues involved, and

(4) Have the staff directly responsible for reviewing the application either present at the hearing, or have a deposition from the staff, whichever the Commissioner or the Commissioner's designee decides.

(e) The Commissioner or the Commissioner's designee conducts a fair and impartial hearing, takes all necessary action to avoid delay and to maintain order and has all powers necessary to these ends.

(f) Formal rules of evidence do not apply to the hearings.

(g) The official hearing transcript together with all papers documents, exhibits, and requests filed in the proceedings, including rulings, constitutes the record for decision.

(h) After consideration of the record, the Commissioner or the Commissioner's designee issues a written decision, based on the record, which sets forth the reasons for the decision and the evidence on which it was based. The decision is issued within 60 days of the date of the hearing, constitutes the final administrative action on the matter and is promptly mailed to the organization.

(i) Either the organization or the staff of the Administration on Aging may request, for good cause, an extension of any of the time limits specified in this section.

SUBCHAPTER D—THE ADMINISTRATION FOR NATIVE AMERICANS, NATIVE AMERICAN PROGRAMS

PART 1336—NATIVE AMERICAN PROGRAMS

Subpart A—Definitions

Sec.
1336.10 Definitions.

Subpart B—Purpose of the Native American Programs

1336.20 Program purpose.

Subpart C—Native American Projects

1336.30 Eligibility under sections 804 and 805 of the Native American Programs Act of 1974.
1336.31 Project approval procedures.
1336.32 Grants.
1336.33 Eligible applicants and proposed activities which are ineligible.
1336.34 Notice of ineligibility.
1336.35 Appeal of ineligibility.

Subpart D—Evaluation

1336.40 General.

Subpart E—Financial Assistance Provisions

1336.50 Financial and administrative requirements.
1336.51 Project period.
1336.52 Appeals.

Subpart F—Native Hawaiian Revolving Loan Fund Demonstration Project

1336.60 Purpose of this subpart.
1336.61 Purpose of the Revolving Loan Fund.
1336.62 Definitions.
1336.63 General responsibilities of the Loan Administrator.
1336.64 Development of goals and strategies: Responsibilities of the Loan Administrator.
1336.65 Staffing and organization of the Revolving Loan Fund: Responsibilities of the Loan Administrator.
1336.66 Procedures and criteria for administration of the Revolving Loan Fund: Responsibilities of the Loan Administrator.
1336.67 Security and collateral: Responsibilities of the Loan Administrator.
1336.68 Defaults, uncollectible loans, liquidations: Responsibilities of the Loan Administrator.
1336.69 Reporting requirements: Responsibilities of the Loan Administrator.
1336.70 Technical assistance: Responsibilities of the Loan Administrator.
1336.71 Administrative costs.
1336.72 Fiscal requirements.
1336.73 Eligible borrowers.
1336.74 Time limits and interest on loans.
1336.75 Allowable loan activities.
1336.76 Unallowable loan activities.
1336.77 Recovery of funds.

AUTHORITY: 42 U.S.C. 2991 *et seq.*

SOURCE: 48 FR 55821, Dec. 15, 1983, unless otherwise noted.

Subpart A—Definitions

§ 1336.10 Definitions.

For the purposes of this part, unless the context otherwise requires:

Act means the Native American Programs Act of 1974, as amended (42 U.S.C. 2991 et seq.).

Alaskan Native means a person who is an Alaskan Indian, Eskimo, or Aleut, or any combination thereof. The term also includes any person who is regarded as an Alaskan Native by the Alaskan Native Village or group of which he or she claims to be a member and whose father or mother is (or, if deceased, was) regarded as an Alaskan Native by an Alaskan Native Village or group. The term includes any Alaskan Native as so defined, either or both of whose adoptive parents are not Alaskan Natives.

American Indian or Indian means any individual who is a member or a descendant of a member of a North American tribe, band, Pueblo or other organized group of native people who are indigenous to the Continental United States, or who otherwise have a special relationship with the United States or a State through treaty, agreement, or some other form of recognition. This includes any individual who claims to be an Indian and who is regarded as such by the Indian tribe, group, band, or community of which he or she claims to be a member.

ANA means the Administration for Native Americans within the Office of Human Development Services.

Applicant means an organization which has applied for financial assistance from ANA.

Budget period means the interval of time into which a project period is divided for budgetary and funding purposes, and for which a grant is made. A budget period usually lasts one year in a multi-year project period.

Economic and social self-sufficiency means the ability of Native Americans to define and achieve their own economic and social goals.

Indian tribe means a distinct political community of Indians which exercises powers of self-government.

Native American means American Indian, Indian, Native Hawaiian, and Alaskan Native, as defined in the Act, or in this section.

Project period means, for discretionary grants and cooperative agreements, the total time for which the recipient's project or program is approved for support, including any extension, subject to the availability of funds, satisfactory progress, and a determination by HHS that continued funding is in the best interest of the Government.

Recipient means an organization which has applied for financial assistance, and to which financial assistance is awarded under this Act. The term includes grantees and recipients of cooperative agreements.

Subpart B—Purpose of the Native American Programs

§ 1336.20 Program purpose.

The purpose of the Native American Programs authorized by the Native American Programs Act of 1974 is to promote the goal of economic and social self-sufficiency for Native Americans.

Subpart C—Native American Projects

§ 1336.30 Eligibility under sections 804 and 805 of the Native American Programs Act of 1974.

Financial assistance under sections 804 and 805 may be made to public or private agencies including ''for-profit'' organizations.

[48 FR 55821, Dec. 15, 1983, as amended at 53 FR 23968, June 24, 1988; 53 FR 28223, July 27, 1988; 54 FR 3452, Jan. 24, 1989; 61 FR 42820, Aug. 19, 1996]

§ 1336.31 Project approval procedures.

(a) Each applicant for financial assistance under section 803 of the Act must submit a work plan that falls within the statutory requirements of the Act and meets the criteria of program announcements published by ANA in the FEDERAL REGISTER. If the proposed project extends beyond one year, a work plan must be submitted for the period of time specified by the Commissioner in the Program Announcement. ANA will determine whether to approve all, part, or none of the requested work plan. Proposed changes to the approved work plan must receive the written approval of ANA prior to implementation by the recipient.

(b) ANA will negotiate the approved project goals, objectives, work plan, and the funding level for each budget period with each recipient.

(c) The evaluation for the purpose of making an approval decision on each proposed work plan will take into account the proposal's conformance with ANA program purposes and the recipient's past performance and accomplishments.

(d) Financial assistance awarded under section 803 may be renewed by ANA to grantees based on acceptable work plans and past performance.

(Approved by the Office of Management and Budget under control number 0980–0016)

§ 1336.32 Grants.

Generally, financial assistance will be made available for a one-year budget period and subsequent non-competing continuation awards with the same project period will also be for one year. A recipient must submit a separate application to have financial assistance continued for each subsequent year, with the same project period, but the continuation application need only

contain budget and a summary progress report.

§ 1336.33 Eligible applicants and proposed activities which are ineligible.

(a) Eligibility for the listed programs is restricted to the following specified categories of organizations. In addition, applications from tribal components which are tribally-authorized divisions of a larger tribe must be approved by the governing body of the Tribe. If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served.

(1) Social and Economic Development Strategies (SEDS) and Preservation and Enhancement of Native American Languages:

(i) Federally recognized Indian Tribes;

(ii) Consortia of Indian Tribes;

(iii) Incorporated non-Federally recognized Tribes;

(iv) Incorporated nonprofit multi-purpose community-based Indian organizations;

(v) Urban Indian Centers;

(vi) National and regional incorporated nonprofit Native American organizations with Native American community-specific objectives;

(vii) Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANSCA) and/or nonprofit village consortia;

(viii) Incorporated nonprofit Alaska Native multi-purpose community-based organizations;

(ix) Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects;

(x) Nonprofit Native organizations in Alaska with village specific projects;

(xi) Public and nonprofit private agencies serving Native Hawaiians;

(xii) Public and nonprofit private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands. (The populations served may be located on these islands or in the United States);

(xiii) Tribally Controlled Community Colleges Tribally Controlled Post-Secondary Vocational Institutions, and colleges and universities located in Hawaii, Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands which serve Native American Pacific Islanders; and

(xiv) Nonprofit Alaska Native community entities or tribal governing bodies (Indian Reorganization Act or traditional councils) as recognized by the Bureau of Indian Affairs.

(Statutory authority: Sections 803(a) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991 b(a) and 42 U.S.C. 2991b–3)

(2) Alaska-Specific Social and Economic Development Strategies (SEDS) Projects:

(i) Federally recognized Indian Tribes in Alaska;

(ii) Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;

(iii) Incorporated nonprofit Alaska Native multi-purpose community-based organizations;

(iv) Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects; and

(v) Nonprofit Native organizations in Alaska with village specific projects.

(3) Mitigation of Environmental Impacts to Indian Lands Due to Department of Defense Activities:

(i) Federally recognized Indian Tribes;

(ii) Incorporated non-Federally and State recognized Tribes;

(iii) Nonprofit Alaska Native community entities or tribal governing bodies (Indian Reorganization Act (IRA) or traditional councils) as recognized by the Bureau of Indian Affairs.

(iv) Nonprofit Alaska Native Regional Associations and/or Corporations with village specific projects; and

(v) Other tribal or village organizations or consortia of Indian Tribes. (Statutory authority: § 8094A of the Department of Defense Appropriations Act, 1994 (Public Law 103–139), § 8094A of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991h(b)).

(4) Improvement of the capability of tribal governing bodies to regulate environmental quality:

(i) Federally recognized Indian Tribes;

(ii) Incorporated non-Federally and State recognized Indian tribes;

(iii) Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANSCA) and/or nonprofit village consortia;

(iv) Nonprofit Alaska Native Regional Corporations/Associations with village-specific projects;

(v) Other tribal or village organizations or consortia of Indian tribes: and

(vi) Tribal governing bodies (IRA or traditional councils) as recognized by the Bureau of Indian Affairs. (Statutory authority: Sections 803(d) of the Native Americans Programs Act of 1974, as amended 42 U.S.C. 2991b(d).)

(b) The following is a nonexclusive list of activities that are ineligible for funding under programs authorized by the Native American Programs Act of 1974:

(1) Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations (''third party T/TA''). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable;

(2) Projects that request funds for feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's SEDS long-range development plan;

(3) The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs;

(4) Core administration functions, or other activities, that essentially support only the applicant's on-going administrative functions; however, for Competitive Area 2, Alaska-Specific SEDS Projects, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place;

(5) The conduct of activities which are not responsive to one or more of the three interrelated ANA goals (Governance Development, Economic Development, and Social Development);

(6) Proposals from consortia of tribes that are not specific with regard to support from, and roles of member tribes. An application from a consortium must have goals and objectives that will create positive impacts and outcomes in the communities of its members. ANA will not fund activities by a consortium of tribes which duplicates activities for which member tribes also receive funding from ANA; and

(7) The purchase of real estate. (Statutory authority: Sections 803B of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b–2)

[61 FR 42820, Aug. 19, 1996]

§ 1336.34 Notice of ineligibility.

(a) Upon a finding by the Commissioner that an organization which has applied for funding is ineligible or that the activities proposed by an organization are ineligible, the Commissioner shall inform the applicant by certified letter of the decision.

(b) The letter must include the following:

(1) The legal and factual grounds for the Commissioner's finding concerning eligibility;

(2) A copy of the regulations in this part; and

(3) The following statement: This is the final decision of the Commissioner, Administration for Native Americans. It shall be the final decision of the Department unless, within 30 days after receiving this decision as provided in §810(b) of the Native Americans Programs Act of 1974, as amended, and 45 CFR part 1336, you deliver or mail (you should use registered or certified mail to establish the date) a written notice of appeal to the HHS Departmental Appeals Board, 200 Independence Avenue, S.W., Washington, D.C. 20201. You shall attach to the notice a copy of this decision and note that you intend an appeal. The appeal must clearly identify the issue(s) in dispute and contain a statement of the applicant's position on such issue(s) along with pertinent facts and reasons in support of the position. We are enclosing a copy of 45

CFR part 1336 which governs the conduct of appeals under §810(b). For additional information on the appeals process see 45 CFR 1336.35. (Statutory authority: Sections 810(b) of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991h(b).)

[61 FR 42821, Aug. 19, 1996]

§ 1336.35 Appeal of ineligibility.

The following steps apply when seeking an appeal on a finding of ineligibility for funding:

(a) An applicant, which has had its application rejected either because it has been found ineligible or because the activities it proposes are ineligible for funding by the Commissioner of ANA, may appeal the Commissioner's ruling to the HHS Departmental Appeals Board, in writing, within 30 days following receipt of ineligibility notification.

(b) The appeal must clearly identify the issue(s) in dispute and contain a statement of the applicant's position on such issue(s) along with pertinent facts and reasons in support of the position.

(c) Upon receipt of appeal for reconsideration of a rejected application or activities proposed by an applicant, the Departmental Appeals Board will notify the applicant by certified mail that the appeal has been received.

(d) The applicant's request for reconsideration will be reviewed by the Departmental Appeals Board in accordance with 45 CFR part 16, except as otherwise provided in this part.

(e) The Commissioner shall have 45 days to respond to the applicant's submission under paragraph (a) of this section.

(f) The applicant shall have 20 days to respond to the Commissioner's submission and the parties may be requested to submit additional information within a specified time period before closing the record in the appeal.

(g) The Departmental Appeals Board will review the record in the appeal and provide a final written decision within 30 days following the closing of the record, unless the Board determines for good reason that a decision cannot be issued within this time period and so notifies the parties.

(h) If the Departmental Appeals Board determines that the applicant is eligible or that the activities proposed by the applicant are eligible for funding, such eligibility shall not be effective until the next cycle of grant proposals are considered by the Administration for Native Americans. (Statutory authority: Sections 810(b) of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991h(b).)

[61 FR 42822, Aug. 19, 1996]

Subpart D—Evaluation

§ 1336.40 General.

Progress reports and continuation applications must contain sufficient information for ANA to determine the extent to which the recipient meets ANA project evaluation standards. Sufficient information means information adequate to enable ANA to compare the recipient's accomplishments with the goals and activities of the approved work plan and with ANA project evaluation criteria.

(Approved by the Office of Management and Budget under control numbers 0980–0155 and 0980–0144)

Subpart E—Financial Assistance Provisions

§ 1336.50 Financial and administrative requirements.

(a) *General.* The following HHS regulations apply to all grants awarded under this part:

45 CFR Part 16 Department grant appeals process.

45 CFR Part 46 Protection of human subjects.

45 CFR Part 74 Administration of grants.

45 CFR Part 75 Informal grant appeals procedures (indirect cost rates and other cost allocations).

45 CFR Part 80 Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—Effectuation of title VI of the Civil Rights Act of 1964.

45 CFR Part 81 Practice and procedure for hearing under part 80.

45 CFR Part 84 Nondiscrimination on the basis of handicap in federally assisted programs.

45 CFR Part 86 Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance.

45 CFR Part 91 Nondiscrimination on the basis of age in programs or activities receiving Federal financial assistance from HHS.

(b) *Cost sharing or matching*—(1) *Policy*. Recipients of financial assistance under sections 803, 804, and 805 of the Act are required to provide a matching share of 20 percent of the approved cost of the assisted project.

This requirement may be waived in accordance with the criteria in §1336.50(b)(3). The matching share requirement may be met using either cash or in-kind contributions.

(2) *Application*. If an applicant wishes to request a waiver of the requirement for a 20 percent non-Federal matching share, it must include with is application for funding a written justification that clearly explains why the applicant cannot provide the matching share and how it meets the criteria.

(3) *Criteria*. Both of the following criterial must be met for an applicant to be eligible for a waiver of the non-Federal matching requirement:

(i) Applicant lacks the available resources to meet part or all of the non-Federal matching requirement. This must be documented by an institutional audit if available, or a full disclosure of applicant's total assets and liabilities.

(ii) Applicant can document that reasonable efforts to obtain cash or inkind contributions for the purposes of the project from third parties have been unsuccessful. Evidence of such efforts can include letters from possible sources of funding indicating that the requested resources are not available for that project. The requests must be appropriate to the source in terms of project purpose, applicant eligibility, and reasonableness of the request.

(4) *Approval.* For a waiver to be approved, ANA must determine that it will not prevent the award of other grants at levels it believes are desirable for the purposes of the program. Waiver of all or part of the non-Federal share shall apply only to the budget period for which application was made.

(c) *Maintenance of effort.* (1) Applications for financial assistance under this Part must include either a statement of compliance with the maintenance of effort requirement contained in section 803(c) of the Act, or a request for a waiver, in accordance with criteria established in this paragraph.

(2) To be eligible for a waiver of the maintenance of effort requirement, the applicant must demonstrate to ANA that the organization whose funds previously supported the project discontinued its support:

(i) As a result of funding limitations; and

(ii) Not as a result of an adverse evaluation of the project's purpose or the manner in which it was conducted; and

(iii) Not because it was anticipated that Federal funds would replace the original source of project funding.

(3) In addition, the applicant must demonstrate in the request for a waiver that the maintenance of effort requirement would result in insurmountable hardship for the recipient or would otherwise be inconsistent with the purposes of this part.

(d) *Delegation of project operations.* (1) Each subgrant awarded to a delegate agency must have specific prior approval by ANA. Such delegation must be formalized by written agreement.

(2) The agreement must specify the activities to be performed by the delegate agency, the time schedule, the policies and procedures to be followed, the dollar limitations, and the costs allowed. The applicant must submit a budget for each delegate agency as part of its application.

(e) *Unallowable costs.* ANA funds may not be used by recipients to purchase real property.

(f) *Office of the Chief Executive.* The costs of salaries and expenses of the Office of Chief Executive of a federally recognized Indian tribal government (as defined in §74.3 of this title) are allowable, provided that such costs exclude any portion of salaries and expenses of the Office of Chief Executive that are a cost of general government and provided they are related to a project assisted under this part.

§ 1336.51 Project period.

The Notice of Financial Assistance Awarded will specify the period for which support is intended, although the Department makes funding commitments only for one budget period at a time. Financial assistance under section 803 of the Act may be ongoing, subject to policy decisions and funding limitations.

§ 1336.52 Appeals.

(a) *Right to appeal.* Recipients whose financial assistance has been suspended or terminated, or whose non-competing continuation applications for refunding have been denied, may appeal such decisions using the procedures described in this section. Denial of an application for refunding means the refusal to fund a non-competing continuation application for a budget period within a previously approved project period.

(b) *Suspension, termination, and denial of funding.* Procedures for and definitions of suspension and termination of financial assistance are published in 45 CFR 74.110–74.116. Appeals from a denial of refunding will be treated the same procedurally as appeals to termination of financial assistance. The term ''denial of refunding'' does not include policy decisions to eliminate one or more activities of an approved project. A decision not to fund an application at the end of the recipients's project period is not a ''denial of refunding'' and is not subject to appeal.

(c) *Hearings.* (1) A recipient shall be given an initial written notice at least thirty (30) days prior to the suspension or termination of financial assistance except in emergency situations, which occur when Federal property is in imminent danger of dissipation, or when life, health, or safety is endangered. During this period of time, the recipient has the opportunity to show cause to ANA why such action should not be taken.

(2) A recipient who has received final written notice of termination or denial of refunding, or whose financial assistance will be suspended for more than 30 days, or who has other appealable disputes with ANA as provided by 45 CFR part 16 may request review by the Departmental Grant Appeals Board under the provisions of 45 CFR part 16.

(3) If a recipient appeals a suspension of more than 30 days which subsequently results in termination of financial assistance, both actions may be considered simultaneously by the Departmental Grant Appeals Board.

Subpart F—Native Hawaiian Revolving Loan Fund Demonstration Project

AUTHORITY: 88 Stat. 2324, 101 Stat. 976 (42 U.S.C. 2991, et seq.).

SOURCE: 53 FR 23969, June 24, 1988 (interim) and 53 FR 28223, July 27, 1988; 54 FR 3452, Jan. 24, 1989 (final), unless otherwise noted.

§ 1336.60 Purpose of this subpart.

(a) The Administration for Native Americans will award a five-year demonstration grant to one agency of the State of Hawaii or to one community-based Native Hawaiian organization whose purpose is the economic and social self-sufficiency of Native Hawaiians to develop procedures for and to manage a revolving loan fund for Native Hawaiian individuals and organizations in the State of Hawaii. (section 830A(a)(1))

(b) This subpart sets forth the requirements that the organization or agency selected to administer the revolving loan fund must meet and the terms and conditions applicable to loans made to borrowers from the loan fund.

§ 1336.61 Purpose of the Revolving Loan Fund.

The purpose of the Native Hawaiian Revolving Loan Fund is to provide funding not available from other sources on reasonable terms and conditions to:

(a) Promote economic activities which result in expanded opportunities for Native Hawaiians to increase their ownership of, employment in, or income from local economic enterprise;

(b) Assist Native Hawaiians to overcome specific gaps in local capital markets and to encourage greater private-sector participation in local economic development activities; and

(c) Increase capital formation and private-sector jobs for Native Hawaiians. (section 803A(a)(1)(A))

§ 1336.62 Definitions.

Applicant means an applicant for a loan from the Native Hawaiian Revolving Loan Fund. An applicant must be an individual Native Hawaiian or a Native Hawaiian organization. If the applicant is a group of people organized for economic development purposes, the applicant ownership must be 100% Native Hawaiian.

Commissioner means the Commissioner of the Administration for Native Americans.

Cooperative association means an association of individuals organized pursuant to State or Federal law, for the purpose of owning and operating an economic enterprise for profit, with profits distributed or allocated to patrons who are members of the organization.

Corporation means an entity organized pursuant to State or Federal law, as a corporation, with or without stock, for the purpose of owning and operating an economic enterprise.

Default means failure of a borrower to make scheduled payments on a loan, failure to obtain the lender's approval for disposal of assets mortgaged as security for a loan, or failure to comply with the convenants, obligations or other provisions of a loan agreement.

Economic enterprise means any Native Hawaiian-owned, commercial, industrial, agricultural or other business activity established or organized for the purpose of profit.

Financing statement means the document filed or recorded in country or State offices pursuant to the provisions of the Uniform Commercial Code as enacted by Hawaii notifying third parties that a lender has a lien on the chattel and/or crops of a borrower.

Loan Administrator means either the agency of the State of Hawaii or the community-based Native Hawaiian organization whose purpose is the economic and social self-sufficiency of Native Hawaiians selected to administer the revolving loan fund.

Mortgages mean mortgages and deeds of trust evidencing an encumbrance of trust or restricted land, mortgages and security agreements executed as evidence of liens against crops and chattels, and mortgages and deeds of trust evidencing a lien on leasehold interests.

Native Hawaiian means an individual any of whose ancestors were natives of the area which consists of the Hawaiian Islands prior to 1778.

Partnership means two or more persons engaged in the same business, sharing its profits and risks, and organized pursuant to state or Federal law.

Profits mean the net income earned after deducting operating expenses from operating revenues.

Revolving Loan Fund (RLF) means all funds that are now or are hereafter a part of the Native Hawaiian Revolving Loan Fund authorized by the Native American Programs Act of 1974, as amended in 1987, and supplemented by sums collected in repayment of loans made, including interest or other charges on loans and any funds appropriated pursuant to section 803A of the Native American Programs Act of 1974, as amended.

§ 1336.63 General responsibilities of the Loan Administrator.

(a) The Loan Administrator will make loans to Native Hawaiian organizations and to individual Native Hawaiians for the purpose or promoting economic development among Native Hawaiians in the State of Hawaii. (Section 803(a)(1)(A).)

(b) Prior to any loan being made from the RLF, the Loan Administrator will develop and obtain the Commissioner's approval of the following organizational and administrative materials necessary to implement the RLF:

(1) Goals and strategies;

(2) Staffing and organizational responsibilities;

(3) Preapplication and loan screening processes;

(4) Loan procedures including application forms;

(5) Criteria and procedures for loan review, evaluation and decision-making;

(6) Loan closing procedures; and

(7) Procedures for loan servicing, monitoring and provision of technical assistance.

(c) The Loan Administrator will set up fiscal management procedures to satisfy the requirements of section

803A of the Native American Programs Act and this subpart.

(d) The Loan Administrator must set up a separate account for the RLF into which all payments, interest, charges, and other amounts collected from loans made from the RLF will be deposited.

§ 1336.64 Development of goals and strategies: Responsibilities of the Loan Administrator.

(a) Prior to the approval of any direct loan under the RLF, the Loan Administrator will develop and obtain the Commissioner's approval for a clear and comprehensive set of goals and strategies for the RLF. The goals will specify the results the Loan Administrator expects to accomplish from the Revolving Loan Fund, define the RLF's role and responsibilities for potential users, and serve as the basis for the development of an organizational strategy and operating plan. The RLF strategies will provide the Loan Administrator with a sound understanding of the economic and market conditions within the Native Hawaiian community.

(b) The following factors shall be considered by the Loan Administrator in developing the RLF's goals:

(1) Employment needs of the local population;

(2) Characteristics of the local economic base;

(3) Characteristics of the local capital base and the gaps in the local availability of business capital;

(4) Local resources for economic development and their availability; and

(5) Goals and strategies of other local organizations involved in economic development.

(c) The loan fund strategies developed by the Revolving Loan Fund must include the following:

(1) *Business Targeting Strategy:* to determine which types of businesses are to be targeted by the loan fund. The Loan Administrator will develop procedures to ensure that the loans made are directed to Native Hawaiians.

(2) *Financing Strategy:* to determine the types of financing the loan fund will provide;

(3) *Business Assistance Strategy:* to identify the possible or potential management problems of a borrower and develop a workable plan for providing borrowers with the needed management assistance;

(4) *Marketing Strategy:* to generate applications from potential borrowers and to generate the support and participation of local financial institutions;

(5) *Capital Base Management Strategy:* to develop and allocate the financial resources of the fund in the most effective possible way to meet the need or demand for financing; and

(6) *Accountability Strategy:* to develop policies and mechanisms to hold borrowers accountable for providing the public benefits promised (e.g. jobs) in return for financing; to ensure that, until expenditure, loan proceeds are held by the borrower in secured, liquid financial instruments; to hold borrowers accountable for upholding the commitments made prior to the loan; and to develop the methods used by the RLF to enforce these commitments.

§ 1336.65 Staffing and organization of the Revolving Loan Fund: Responsibilities of the Loan Administrator.

Prior to the approval of any direct loan under the RLF, the Loan Administrator must develop and obtain the Commissioner's approval for the RLF's organization table, including:

(a) The structure and composition of the Board of Directors of the RLF;

(b) The staffing requirements for the RLF, with position descriptions and necessary personnel qualifications;

(c) The appointments to the advisory loan review committee; and

(d) The roles and responsibilities of the Board, staff and loan review committee.

§ 1336.66 Procedures and criteria for administration of the Revolving Loan Fund: Responsibilities of the Loan Administrator.

Prior to the approval of any direct loan under the RLF, the Loan Administrator must develop and obtain the Commissioner's approval for the following procedures:

(a) *Preapplication and loan screening procedures.* Some factors to be considered in the loan screening process are:

(1) General eligibility criteria;

(2) Potential economic development criteria;

(3) Indication of business viability;

(4) The need for RLF financing; and

(5) The ability to properly utilize financing.

(b) *Application process.* The application package includes forms, instructions, and policies and procedures for the loan application. The package must also include instructions for the development of a business and marketing plan and a financing proposal from the applicant.

(c) *Loan evaluation criteria and procedures.* The loan evaluation must include the following topics:

(1) General and specific business trends;

(2) Potential market for the product or service;

(3) Marketing strategy;

(4) Management skills of the borrower;

(5) Operational plan of the borrower;

(6) Financial controls and accounting systems;

(7) Financial projections; and

(8) Structure of investment and financing package.

(d) *Loan decision-making process.* Decision-making on a loan application includes the recommendations of the staff, the review by the loan review committee and the decision by the Board.

(e) *Loan closing process.* The guidelines for the loan closing process include the finalization of loan terms; conditions and covenants; the exercise of reasonable and proper care to ensure adherence of the proposed loan and borrower's operations to legal requirements; and the assurance that any requirement for outside financing or other actions on which disbursement is contingent are met by the borrower.

(f) *Loan closing documents.* Documents used in the loan closing process include:

(1) *Term Sheet:* an outline of items to be included in the loan agreement. It should cover the following elements:

(i) Loan terms;

(ii) Security interest;

(iii) Conditions for closing the loan;

(iv) Covenants, including reporting requirements;

(v) Representations and warranties;

(vi) Defaults and remedies; and

(vii) Other provisions as necessary.

(2) *Closing Agenda:* an outline of the loan documents, the background documents, and the legal and other supporting documents required in connection with the loan.

(g) *Loan servicing and monitoring.* The servicing of a loan will include collections, monitoring, and maintenance of an up-to-date information system on loan status.

(1) *Collections:* To include a repayment schedule, invoice for each loan payment, late notices, provisions for late charges.

(2) *Loan Monitoring:* To include regular reporting requirements, periodic analysis of corporate and industry information, scheduled telephone contact and site visits, regular loan review committee oversight of loan status, and systematic internal reports and files.

§ 1336.67 Security and collateral: Responsibilities of the Loan Administrator.

The Loan Administrator may require any applicant for a loan from the RLF to provide such collateral as the Loan Administrator determines to be necessary to secure the loan. (Section 803A(b)(3))

(a) *As a Credit Factor.* The availability of collateral security normally is considered an important factor in making loans. The types and amount of collateral security required should be governed by the relative strengths and weaknesses of other credit factors. The taking of collateral as security should be considered with respect to each loan. Collateral security should be sufficient to provide the lender reasonable protection from loss in the case of adversity, but such security or lack thereof should not be used as the primary basis for deciding whether to extend credit.

(b) *Security Interests.* Security interests which may be taken by the lender include, but are not limited to, liens on real or personal property, including leasehold interests; assignments of income and accounts receivable; and liens on inventory or proceeds of inventory sales as well as marketable securities and cash collateral accounts.

(1) *Motor vehicles.* Liens ordinarily should be taken on licensed motor vehicles, boats or aircraft purchased hereunder in order to be able to transfer title easily should the lender need to declare a default or repossess the property.

(2) *Insurance on property secured.* Hazard insurance up to the amount of the loan or the replacement value of the property secured (whichever is less) must be taken naming the lender as beneficiary. Such insurance includes fire and extended coverage, public liability, property damage, and other appropriate types of hazard insurance.

(3) *Appraisals.* Real property serving as collateral security must be appraised by a qualified appraiser. For all other types of property, a valuation shall be made using any recognized, standard technique (including standard reference manuals), and this valuation shall be described in the loan file.

(c) *Additional security.* The lender may require collateral security or additional security at any time during the term of the loan if after review and monitoring an assessment indicates the need for such security.

§ 1336.68 Defaults, uncollectible loans, liquidations: Responsibilities of the Loan Administrator.

(a) Prior to making loans from the RLF, the Loan Administrator will develop and obtain the Commissioner's approval for written procedures and definitions pertaining to defaults and collections of payments. (section 803A(b)(4))

(b) The Loan Administrator will provide a copy of such procedures and definitions to each applicant for a loan at the time the application is made. (section 803A(b)(4))

(c) The Loan Administrator will report to the Commissioner whenever a loan recipient is 90 days in arrears in the repayment of principal or interest or has failed to comply with the terms of the loan agreement. After making reasonable efforts to collect amounts payable, as specified in the written procedures, the Loan Administrator shall notify the Commissioner whenever a loan is uncollectible at reasonable cost. The notice shall include recommendations for future action to be taken by the Loan Administrator. (section 803A(c) (1) and (2))

(d) Upon receiving such notices, the Commissioner will, as appropriate, instruct the Loan Administrator:

(1) To demand the immediate and full repayment of the loan;

(2) To continue with its collection activities;

(3) To cancel, adjust, compromise, or reduce the amount of such loan;

(4) To modify any term or condition of such loan, including any term or condition relating to the rate of interest or the time of payment of any installment of principal or interest, or portion thereof, that is payable under such loan;

(5) To discontinue any further advance of funds contemplated by the loan agreement;

(6) To take possession of any or all collateral given as security and in the case of individuals, corporations, partnerships or cooperative associations, the property purchased with the borrowed funds;

(7) To prosecute legal action against the borrower or against the officers of the borrowing organization;

(8) To prevent further disbursement of credit funds under the control of the borrower;

(9) To assign or sell at a public or private sale, or otherwise dispose of for cash or credit any evidence of debt, contract, claim, personal or real property or security assigned to or held by the Loan Administrator; or

(10) To liquidate or arrange for the operation of economic enterprises financed with the revolving loan until the indebtedness is paid or until the Loan Administrator has received acceptable assurance of its repayment and compliance with the terms of the loan agreement. (Section 803A(c)(2)(B))

§ 1336.69 Reporting requirements: Responsibilities of the Loan Administrator.

(a) The Loan Administrator will maintain the following internal information and records:

(1) For each borrower: The loan repayment schedule, log of telephone calls and site visits made with the date

and the items discussed, correspondence with the borrower, progress reports and analyses.

(2) Monthly status of all outstanding loans, noting all overdue payments.

(3) Monthly status of the investments of the revolving loan fund monies not currently used for loans.

(4) Monthly records on the revenue generated by the loan fund from interest charges and late charges.

(5) Monthly administrative costs of the management of the loan fund and the sources of the monies to support the administrative costs.

(b) The Loan Administrator must submit a quarterly report to the Commissioner. The report may be in a format of the choice of the Loan Administrator as long as it includes at a minimum the following topics:

(1) For each borrower:

(i) Name of the borrower;

(ii) Economic development purpose(s) of the loan;

(iii) Financing of the loan by source;

(iv) Loan status (current/delinquent/paid);

(v) Principal and interest outstanding; and

(vi) Amount delinquent/defaulted, if any.

(2) Financial status of the RLF:

(i) Administrative cost expenditures;

(ii) Level of base capital;

(iii) Level of current capital;

(iv) Amount of ANA funding;

(v) Matching share;

(vi) Other direct funding of the RLF;

(vii) Program income, including interest on loans, earnings from investments, fee charges;

(viii) Loans made;

(ix) Losses on loans;

(x) Principal and interest outstanding;

(xi) Loans repaid;

(xii) Delinquent loans; and

(xiii) Collateral position of the RLF (the value of collateral as a percent of the outstanding balance on direct loans).

(c) The Loan Administrator must submit a semi-annual report to the Commissioner containing an analysis of the RLF progress to date.

(d) The Loan Administrator must submit to the Department a quarterly SF–269, Financial Status Report, or any equivalent report required by the Department.

§ 1336.70 Technical assistance: Responsibilities of the Loan Administrator.

The Loan Administrator will assure that competent management and technical assistance is available to the borrower consistent with the borrower's knowledge and experience and the nature and complexity of the economic enterprise being financed by the RLF. Consultants, RLF staff, and members of the loan review committee and Board may be used to assist borrowers. (section 803A(d)(1)(B))

§ 1336.71 Administrative costs.

Reasonable administrative costs of the RLF may be paid out of the loan fund. The grant award agreement between the Loan Administrator and ANA will set forth the allowable administrative costs of the loan fund during the five-year demonstration period. (sections 803A(a)(2) and 803A(d)(1)(A))

§ 1336.72 Fiscal requirements.

(a) Any portion of the revolving loan fund that is not required for expenditure must be invested in obligations of the United States or in obligations guaranteed or insured by the United States.

(b) Loans made under the RLF will be for a term that does not exceed five years.

(c) No loan may be made by the RLF after November 29, 1992, the close of the five-year period of the demonstration project. (section 803A(b)(6))

(d) All monies that are in the revolving loan fund on November 29, 1992 and that are not otherwise needed (as determined by the Commissioner) to carry out the provisions of this subpart must be deposited in the Treasury of the United States as miscellaneous receipts. The Commissioner will make this determination based on reports, audits and other appropriate documents as determined by the Commissioner. The Commissioner will take into consideration the costs necessary to collect loans outstanding beyond November 29, 1992, which costs may be paid from interest and loan charges collected by the Fund and in the Fund as of November 29, 1992. To use monies

in the Fund for the costs of collection after November 29, 1992, the Commissioner must give prior approval for such use.

(e) All monies deposited in the revolving loan fund after November 29, 1992 must be deposited in the Treasury of the United States as miscellaneous receipts.

(f) After November 29, 1992, the Loan Administrator will assume responsibility for the collection of all outstanding loans without additional financial assistance from ANA.

§ 1336.73 Eligible borrowers.

(a) Loans may be made to eligible applicants only if the Loan Administrator determines that the applicant is unable to obtain financing on reasonable terms and conditions from other sources such as banks, Small Business Administration, Production Credit Associations, Federal Land Banks; and

(b) Only if there is a reasonable prospect that the borrower will repay the loan. (section 803A(b)(1) (A) and (B))

(c) The Loan Administrator will determine an applicant's inability to obtain financing elsewhere on reasonable terms and conditions from documentation provided by the applicant.

(d) Those eligible to receive loans from the revolving loan fund are:

(1) Native Hawaiian individuals.

(2) Native Hawaiian non-profit organizations.

(3) Native Hawaiian businesses.

(4) Native Hawaiian cooperative associations.

(5) Native Hawaiian partnerships.

(6) Native Hawaiian associations.

(7) Native Hawaiian corporations.

§ 1336.74 Time limits and interest on loans.

(a) Loans made under the RLF will be for a term that does not exceed 5 years.

(b) Loans will be made to approved borrowers at a rate of interest that is 2 percentage points below the average market yield on the most recent public offering of United States Treasury bills occurring before the date on which the loan is made. (section 803A(b)(2) (A) and (B))

§ 1336.75 Allowable loan activities.

The following are among those activities for which a loan may be made from the RLF:

(a) The establishment or expansion of businesses engaged in commercial, industrial or agricultural activities, such as farming, manufacturing, construction, sales, service;

(b) The establishment or expansion of cooperatives engaged in the production and marketing of farm products, equipment, or supplies; the manufacture and sale of industrial, commercial or consumer products; or the provision of various commercial services;

(c) Business or job retention;

(d) Small business development;

(e) Private sector job creation; and

(f) Promotion of economic diversification, e.g. targeting firms in growth industries that have not previously been part of a community's economic base.

§ 1336.76 Unallowable loan activities.

The following activities are among those activities not eligible for support under the revolving loan fund:

(a) Loans to the Loan Administrator or any representative or delegate of the Loan Administrator (section 803A(b)(5));

(b) Loans which would create a potential conflict-of-interest for any officer or employee of the Loan Administrator; loan activities which directly benefit these individuals, or persons related to them by marriage, or law.

(c) Eligible activities which are moved from the State of Hawaii;

(d) Investing in high interest account, certificates of deposit or other investments;

(e) Relending of the loan amount by the borrower;

(f) The purchase of land or buildings;

(g) The construction of buildings; and

(h) Purchasing or financing equity in private businesses.

§ 1336.77 Recovery of funds.

(a) Funds provided under this Subpart may be recovered by the Commissioner for both costs of administration of the Loan Fund and losses incurred by the Fund (hereafter jointly referred to as ''costs'') under the following circumstances:

(1) Whenever claimed costs are unallowable under the Native Americans Programs Act of 1974, as amended, or under 45 CFR part 74, or both;

(2) For costs for loans made to ineligible persons or entities as defined in § 1336.73;

(3) For costs connected with the default of a borrower when the Loan Administrator has failed to perfect any security interest or when the Loan Administrator has failed to obtain collateral when provision of collateral is a condition of a loan.

(4) For costs connected with any default when the Loan Administrator has failed to perform a proper check of an applicant's credit;

(5) For costs whenever the Loan Administrator has failed to notify the Commission of loans at risk as required by § 1336.68 of these regulations, and as may be required by the procedures approved pursuant to that regulation;

(6) For costs whenever the Loan Administrator has failed to follow properly instructions provided to it by the Commissioner pursuant to § 1336.68(d) of these regulations;

(7) For costs which are incurred due to faulty record keeping, reporting, or both; or

(8) For costs which are in connection with any activity or action which violates any Federal or State law or regulation not specifically identified in these regulations.

(b) Whenever the Commissioner determines that funds have been improperly utilized or accounted for, he will issue a disallowance pursuant to the Act and to 45 CFR part 74 and will notify the Loan Administrator of its appeal rights, which appeal must be taken pursuant to 45 CFR part 16.

(c) If a disallowance is taken and not appealed, or if it is appealed and the disallowance is upheld by the Departmental Grant Appeals Board, the Loan Administrator must repay the disallowed amount to the Loan Fund within 30 days, such repayment to be made with non-Federal funds.

SUBCHAPTER E—THE ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES, CHILD ABUSE AND NEGLECT PREVENTION AND TREATMENT PROGRAM

PART 1340—CHILD ABUSE AND NEGLECT PREVENTION AND TREATMENT

Subpart A—General Provisions

Subpart B—Grants to States

Subpart C—Discretionary Grants and Contracts

AUTHORITY: 42 U.S.C. 5101 *et seq.*

SOURCE: 48 FR 3702, Jan. 26, 1983, unless otherwise noted.

Subpart A—General Provisions

§1340.1 Purpose and scope.

(a) This part implements the Child Abuse Prevention and Treatment Act (''Act''). As authorized by the Act, the National Center on Child Abuse and Neglect seeks to assist agencies and organizations at the national, State and community levels in their efforts to improve and expand child abuse and neglect prevention and treatment activities.

(b) The National Center on Child Abuse and Neglect seeks to meet these goals through:

(1) Conducting activities directly (by the Center);

(2) Making grants to States to improve and expand their child abuse and neglect prevention and treatment programs;

(3) Making grants to and entering into contracts for: Research, demonstration and service improvement programs and projects, and training, technical assistance and informational activities; and

(4) Coordinating Federal activities related to child abuse and neglect. This part establishes the standards and procedures for conducting the grant funded activities and contract and coordination activities.

(c) Requirements related to child abuse and neglect applicable to programs assisted under title IV–B of the Social Security Act are implemented by regulation at 45 CFR parts 1355 and 1357.

(d) Federal financial assistance is not available under the Act for the construction of facilities.

[48 FR 3702, Jan. 26, 1983, as amended at 52 FR 3994, Feb. 6, 1987; 55 FR 27639, July 5, 1990]

§1340.2 Definitions.

For the purposes of this part:

(a) *A properly constituted authority* is an agency with the legal power and responsibility to perform an investigation and take necessary steps to prevent and treat child abuse and neglect. A properly constituted authority may include a legally mandated, public or private child protective agency, or the police, the juvenile court or any agency thereof.

(b) *Act* means the Child Abuse Prevention and Treatment Act, 42 U.S.C. 5101, et seq.

(c) *Center* means the National Center on Child Abuse and Neglect established by the Secretary under the Act to administer this program.

(d) *Child abuse and neglect* means the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child under the age of eighteen, or the age specified by the child protection law of the State,

by a person including any employee of a residential facility or any staff person providing out of home care who is responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term encompasses both acts and omissions on the part of a responsible person.

(1) The term *sexual abuse* includes the following activities under circumstances which indicate that the child's health or welfare is harmed or threatened with harm: The employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in, any sexually explicit conduct (or any simulation of such conduct) for the purpose of producing any visual depiction of such conduct; or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children. With respect to the definition of sexual abuse, the term ''child'' or ''children'' means any individual who has not attained the age of eighteen.

(2)(i) ''Negligent treatment or maltreatment'' includes failure to provide adequate food, clothing, shelter, or medical care.

(ii) Nothing in this part should be construed as requiring or prohibiting a finding of negligent treatment or maltreatment when a parent practicing his or her religious beliefs does not, for that reason alone, provide medical treatment for a child; provided, however, that if such a finding is prohibited, the prohibition shall not limit the administrative or judicial authority of the State to ensure that medical services are provided to the child when his health requires it.

(3) *Threatened harm to a child's health or welfare* means a substantial risk of harm to the child's health or welfare.

(4) *A person responsible for a child's welfare* includes the child's parent, guardian, foster parent, an employee of a public or private residential home or facility or other person legally responsible under State law for the child's welfare in a residential setting, or any staff person providing out of home care. For purposes of this definition, out-of-home care means child day care, i.e., family day care, group day care, and center-based day care; and, at State option, any other settings in which children are provided care.

(e) *Commissioner* means the Commissioner of the Administration for Children, Youth and Families of the Department of Health and Human Services.

(f) *Grants* includes grants and cooperative agreements.

(g) *Secretary* means the Secretary of Health and Human Services, or other HHS official or employee to whom the Secretary has delegated the authority specified in this part.

(h) *State* means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

[48 FR 3702, Jan. 26, 1983, as amended at 52 FR 3994, Feb. 6, 1987; 55 FR 27639, July 5, 1990]

§ 1340.3 Applicability of Department-wide regulations.

(a) The following HHS regulations are applicable to all grants made under this part:

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board.
45 CFR Part 46—Protection of human subjects
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—effectuation of title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under part 80
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.

(b) The following regulations are applicable to all contracts awarded under this part:

48 CFR Chapter 1—Federal Acquisition Regulations.

48 CFR Chapter 3—Federal Acquisition Regulations—Department of Health and Human Services.

[48 FR 3702, Jan. 26, 1983, as amended at 52 FR 3995, Feb. 6, 1987]

§ 1340.4 Coordination requirements.

All Federal agencies responsible for programs related to child abuse and neglect shall provide information as required by the Commissioner to insure effective coordination of efforts.

Subpart B—Grants to States

§ 1340.10 Purpose of this subpart.

This subpart sets forth the requirements and procedures States must meet in order to receive grants to develop, strengthen, and carry out State child abuse and neglect prevention and treatment programs under section 107 of the Act.

[55 FR 27639, July 5, 1990]

§ 1340.11 Allocation of funds available.

(a) The Commissioner shall allocate the funds available for grants to States for each fiscal year among the States on the basis of the following formula:

(1) An amount of $25,000 or such other amount as the Commissioner may determine; plus

(2) An additional amount bearing the same ratio to the total amount made available for this purpose (reduced by the minimum amounts allocated to the States under paragraph (a)(1) of this section) as the number of children under the age of eighteen in each State bears to the total number of children under eighteen in all the States. Annual estimates of the number of children under the age of eighteen, provided by the Bureau of the Census of the Department of Commerce, are used in making this determination.

(b) If a State has not qualified for assistance under the Act and this subpart prior to a date designated by the Commissioner in each fiscal year, the amount previously allocated to the State shall be allocated among the eligible States.

§ 1340.12 Application process.

(a) The Governor of the State may submit an application or designate the State office, agency, or organization which may apply for assistance under this subpart. The State office, agency, or organization need not be limited in its mandate or activities to child abuse and neglect.

(b) Grant applications must include a description of the activities presently conducted by the State and its political subdivisions in preventing and treating child abuse and neglect, the activities to be assisted under the grant, a statement of how the proposed activities are expected to improve or expand child abuse prevention and treatment programs in the State, and other information required by the Commissioner in compliance with the paperwork reduction requirements of 44 U.S.C. chapter 35 and any applicable directives issued by the Office of Management and Budget.

(c) States shall provide with the grant application a statement signed by the Governor that the State meets the requirements of the Act and of this subpart. This statement shall be in the form and include the documentation required by the Commissioner.

§ 1340.13 Approval of applications.

(a) The Commissioner shall approve an application for an award for funds under this subpart if he or she finds that:

(1) The State is qualified and has met all requirements of the Act and § 1340.14 of this part, except for the definitional requirement of § 1340.14(a) with regard to the definition of ''sexual abuse'' (see § 1340.2(d)(1)) and the definitional requirement of negligent treatment as it relates to the failure to provide adequate medical care (see § 1340.2(d)(2)). The State must include these two definitional requirements in its definition of child abuse and neglect either by statute or regulation having the force and effect of law no later than the close of the second general legislative session of the State legislature following February 25, 1983;

(2) Either by statute or regulation having the force and effect of law, the State modifies its definition of ''child abuse and neglect'' to provide that the phrase ''person responsible for a child's welfare'' includes an employee of a residential facility or a staff person providing out-of-home care no later than the close of the first general legislative session of the State legislature which convenes following February 6, 1987;

(3) The funds are to be used to improve and expand child abuse or neglect prevention or treatment programs; and

(4) The State is otherwise in compliance with these regulations.

(b) At the time of an award under this subpart, the amount of funds not obligated from an award made eighteen or more months previously shall be subtracted from the amount of funds under the award, unless the Secretary determines that extraordinary reasons justify the failure to so obligate.

[48 FR 3702, Jan. 26, 1983, as amended at 52 FR 3995, Feb. 6, 1987; 55 FR 27639, July 5, 1990]

§ 1340.14 Eligibility requirements.

In order for a State to qualify for an award under this subpart, the State must meet the requirements of § 1340.15 and satisfy each of the following requirements:

(a) State must satisfy each of the requirements in section 107(b) of the Act.

(b) *Definition of Child Abuse and Neglect.* Wherever the requirements below use the term ''Child Abuse and Neglect'' the State must define that term in accordance with § 1340.2. However, it is not necessary to adopt language identical to that used in § 1340.2, as long as the definition used in the State is the same in substance.

(c) *Reporting.* The State must provide by statute that specified persons must report and by statute or administrative procedure that all other persons are permitted to report known and suspected instances of child abuse and neglect to a child protective agency or other properly constituted authority.

(d) *Investigations.* The State must provide for the prompt initiation of an appropriate investigation by a child protective agency or other properly constituted authority to substantiate the accuracy of all reports of known or suspected child abuse or neglect. This investigation may include the use of reporting hotlines, contact with central registers, field investigations and interviews, home visits, consultation with other agencies, medical examinations, psychological and social evaluations, and reviews by multidisciplinary teams.

(e) *Institutional child abuse and neglect.* The State must have a statute or administrative procedure requiring that when a report of known or suspected child abuse or neglect involves the acts or omissions of the agency, institution, or facility to which the report would ordinarily be made, a different properly constituted authority must receive and investigate the report and take appropriate protective and corrective action.

(f) *Emergency services.* If an investigation of a report reveals that the reported child or any other child under the same care is in need of immediate protection, the State must provide emergency services to protect the child's health and welfare. These services may include emergency caretaker or homemaker services; emergency shelter care or medical services; review by a multidisciplinary team; and, if appropriate, criminal or civil court action to protect the child, to help the parents or guardians in their responsibilities and, if necessary, to remove the child from a dangerous situation.

(g) *Guardian ad litem.* In every case involving an abused or neglected child which results in a judicial proceeding, the State must insure the appointment of a guardian ad litem or other individual whom the State recognizes as fulfilling the same functions as a guardian ad litem, to represent and protect the rights and best interests of the child. This requirement may be satisfied: (1) By a statute mandating the appointments; (2) by a statute permitting the appointments, accompanied by a statement from the Governor that the appointments are made in every case; (3) in the absence of a specific statute, by a formal opinion of the Attorney General that the appointments are permitted, accompanied by a Governor's statement that the appointments are made in every case; or (4) by the State's Uniform Court Rule mandating appointments in every case. However, the guardian *ad litem* shall not be the attorney responsible for presenting the evidence alleging child abuse or neglect.

(h) *Prevention and treatment services.* The State must demonstrate that it has throughout the State procedures and services deal with child abuse and neglect cases. These procedures and services include the determination of

social service and medical needs and the provision of needed social and medical services.

(i) *Confidentiality.* (1) The State must provide by statute that all records concerning reports and reports of child abuse and neglect are confidential and that their unauthorized disclosure is a criminal offense.

(2) If a State chooses to, it may authorize by statute disclosure to any or all of the following persons and agencies, under limitations and procedures the State determines:

(i) The agency (agencies) or organizations (including its designated multidisciplinary case consultation team) legally mandated by any Federal or State law to receive and investigate reports of known and suspected child abuse and neglect;

(ii) A court, under terms identified in State statute;

(iii) A grand jury;

(iv) A properly constituted authority (including its designated multidisciplinary case consultation team) investigating a report of known or suspected child abuse or neglect or providing services to a child or family which is the subject of a report;

(v) A physician who has before him or her a child whom the physician reasonably suspects may be abused or neglected;

(vi) A person legally authorized to place a child in protective custody when the person has before him or her a child whom he or she reasonably suspects may be abused or neglected and the person requires the information in the report or record in order to determine whether to place the child in protective custody;

(vii) An agency authorized by a properly constituted authority to diagnose, care for, treat, or supervise a child who is the subject of a report or record of child abuse or neglect;

(viii) A person about whom a report has been made, with protection for the identity of any person reporting known or suspected child abuse or neglect and any other person where the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of such person;

(ix) A child named in the report or record alleged to have been abused or neglected or (as his/her representative) his/her guardian or guardian ad litem;

(x) An appropriate State or local official responsible for administration of the child protective service or for oversight of the enabling or appropriating legislation, carrying out his or her official functions; and

(xi) A person, agency, or organization engaged in a bonafide research or evaluation project, but without information identifying individuals named in a report or record, unless having that information open for review is essential to the research or evaluation, the appropriate State official gives prior written approval, and the child, through his/her representative as cited in paragraph (i) of this section, gives permission to release the information.

(3) If a State chooses, it may authorize by statute disclosure to additional persons and agencies, as determined by the State, for the purpose of carrying out background and/or employment-related screening of individuals who are or may be engaged in specified categories of child related activities or employment. Any information disclosed for this purpose is subject to the confidentiality requirements in paragraph (i)(1) and may be subject to additional safeguards as determined by the State.

(4) Nothing in this section shall be interpreted to prevent the properly constituted authority from summarizing the outcome of an investigation to the person or official who reported the known or suspected instances of child abuse or neglect or to affect a State's laws or procedures concerning the confidentiality of its criminal court or its criminal justice system.

(5) HHS and the Comptroller General of the United States or any of their representatives shall have access to records, as required under 45 CFR 74.24.

[48 FR 3702, Jan. 26, 1983, as amended at 50 FR 14887, April 15, 1985; 52 FR 3995, Feb. 6, 1987; 55 FR 27639, July 5, 1990]

§ 1340.15 Services and treatment for disabled infants.

(a) *Purpose.* The regulations in this section implement certain provisions of the Act, including section 107(b)(10)

governing the protection and care of disabled infants with life-threatening conditions.

(b) *Definitions.* (1) The term ''medical neglect'' means the failure to provide adequate medical care in the context of the definitions of ''child abuse and neglect'' in section 113 of the Act and § 1340.2(d) of this part. The term ''medical neglect'' includes, but is not limited to, the withholding of medically indicated treatment from a disabled infant with a life-threatening condition.

(2) The term ''withholding of medically indicated treatment'' means the failure to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's (or physicians') reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's (or physicians') reasonable medical judgment any of the following circumstances apply:

(i) The infant is chronically and irreversibly comatose:

(ii) The provision of such treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant; or

(iii) The provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

(3) Following are definitions of terms used in paragraph (b)(2) of this section:

(i) The term ''infant'' means an infant less than one year of age. The reference to less than one year of age shall not be construed to imply that treatment should be changed or discontinued when an infant reaches one year of age, or to affect or limit any existing protections available under State laws regarding medical neglect of children over one year of age. In addition to their applicability to infants less than one year of age, the standards set forth in paragraph (b)(2) of this section should be consulted thoroughly in the evaluation of any issue of medical neglect involving an infant older than one year of age who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability.

(ii) The term ''reasonable medical judgment'' means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

(c) *Eligibility requirements.* (1) In addition to the other eligibility requirements set forth in this part, to qualify for a basic State grant under section 107(b) of the Act, a State must have programs, procedures, or both, in place within the State's child protective service system for the purpose of responding to the reporting of medical neglect, including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions.

(2) These programs and/or procedures must provide for:

(i) Coordination and consultation with individuals designated by and within appropriate health care facilities;

(ii) Prompt notification by individuals designated by and within appropriate health care facilities of cases of suspected medical neglect (including instances of the withholding of medically indicated treatment from disabled infants with life-threatening conditions); and

(iii) The authority, under State law, for the State child protective service system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions.

(3) The programs and/or procedures must specify that the child protective services system will prompty contact each health care facility to obtain the name, title, and telephone number of

the individual(s) designated by such facility for the purpose of the coordination, consultation, and notification activities identified in paragraph (c)(2) of this section, and will at least annually recontact each health care facility to obtain any changes in the designations.

(4) These programs and/or procedures must be in writing and must conform with the requirements of section 107(b) of the Act and § 1340.14 of this part. In connection with the requirement of conformity with the requirements of section 107(b) of the Act and § 1340.14 of this part, the programs and/or procedures must specify the procedures the child protective services system will follow to obtain, in a manner consistent with State law:

(i) Access to medical records and/or other pertinent information when such access is necessary to assure an appropriate investigation of a report of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life threatening conditions); and

(ii) A court order for an independent medical examination of the infant, or otherwise effect such an examination in accordance with processes established under State law, when necessary to assure an appropriate resolution of a report of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life threatening conditions).

(5) The eligibility requirements contained in this section shall be effective October 9, 1985.

(d) *Documenting eligibility*. (1) In addition to the information and documentation required by and pursuant to § 1340.12 (b) and (c), each State must submit with its application for a basic State grant sufficient information and documentation to permit the Commissioner to find that the State is in compliance with the eligibility requirements set forth in paragraph (c) of this section.

(2) This information and documentation shall include:

(i) A copy of the written programs and/or procedures established by, and followed within, the State for the purpose of responding to the reporting of medical neglect, including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions:

(ii) Documentation that the State has authority, under State law, for the State child protective service system to pursue any legal remedies, including the authority to inititate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions. This documentation shall consist of:

(A) A copy of the applicable provisions of State statute(s); or

(B) A copy of the applicable provisions of State rules or regulations, along with a copy of the State statutory provisions that provide the authority for such rules or regulations; or

(C) A copy of an official, numbered opinion of the Attorney General of the State that so provides, along with a copy of the applicable provisions of the State statute that provides a basis for the opinion, and a certification that the official opinion has been distributed to interested parties within the State, at least including all hospitals; and

(iii) Such other information and documentation as the Commissioner may require.

(e) *Regulatory construction*. (1) No provision of this section or part shall be construed to affect any right, protection, procedures, or requirement under 45 CFR Part 84, Nondiscrimination in the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

(2) No provision of this section or part may be so construed as to authorize the Secretary or any other governmental entity to establish standards prescribing specific medical treatments for specific conditions, except to the extent that such standards are authorized by other laws or regulations.

(Approved by the Office of Management and Budget under control number 0980–0165)

[50 FR 14887, April 15, 1985, as amended at 52 FR 3995, Feb. 6, 1987; 55 FR 27639, July 5, 1990]

Subpart C—Discretionary Grants and Contracts

§ 1340.20 Confidentiality.

All projects and programs supported under the Act must hold all information related to personal facts or circumstances about individuals involved in those projects or programs confidential and shall not disclose any of the information in other than summary, statistical, or other form which does not identify specific individuals, except in accordance with § 1340.14(i).

APPENDIX TO PART 1340—INTERPRETATIVE GUIDELINES REGARDING 45 CFR 1340.15—SERVICES AND TREATMENT FOR DISABLED INFANTS

EXPLANATORY NOTE: The interpretative guidelines which follow were based on the proposed rule (49 FR 48160, December 10, 1984) and were published with the final rule on April 15, 1985 (50 FR 14878). References to the ''proposed rule'' and ''final rule'' in these guidelines refer to these actions.

Since that time, the Child Abuse Prevention and Treatment Act was revised, reorganized, and reauthorized by Public Law 100–294 (April 25, 1988) and renumbered by Pub. L. 101–126 (October 25, 1989). Accordingly, the definitions formerly in section 3 of the Act are now found in section 113; the State eligibility requirements formerly in section 4 of the Act are now found in section 107; and references to the ''final rule'' mean references to § 1340.15 of this part.

This appendix sets forth the Department's interpretative guidelines regarding several terms that appear in the definition of the term ''withholding of medically indicated treatment'' in section 3(3) of the Child Abuse Prevention and Treatment Act, as amended by section 121(3) of the Child Abuse Amendments of 1984. This statutory definition is repeated in § 1340.15(b)(2) of the final rule.

The Department's proposed rule to implement those provisions of the Child Abuse Amendments of 1984 relating to services and treatment for disabled infants included a number of proposed clarifying definitions of several terms used in the statutory definition. The preamble to the proposed rule explained these proposed clarifying definitions, and in some cases used examples of specific diagnoses to elaborate on meaning.

During the comment period on the proposed rule, many commenters urged deletion of these clarifying definitions and avoidance of examples of specific diagnoses. Many commenters also objected to the specific wording of some of the proposed clarifying definitions, particularly in connection with the proposed use of the word ''imminent'' to describe the proximity in time at which death is anticipated regardless of treatment in relation to circumstances under which treatment (other than appropriate nutrition, hydration and medication) need not be provided. A letter from the six principal sponsors of the ''compromise amendment'' which became the pertinent provisions of the Child Abuse Amendments of 1984 urged deletion of ''imminent'' and careful consideration of the other concerns expressed.

After consideration of these recommendations, the Department decided not to adopt these several proposed clarifying definitions as part of the final rule. It was also decided that effective implementation of the program established by the Child Abuse Amendments would be advanced by the Department stating its interpretations of several key terms in the statutory definition. This is the purpose of this appendix.

The interpretative guidelines that follow have carefully considered comments submitted during the comment period on the proposed rule. These guidelines are set forth and explained without the use of specific diagnostic exmples to elaborate on meaning.

Finally, by way of introduction, the Department does not seek to establish these interpretative guidelines as binding rules of law, nor to prejudge the exercise of reasonable medical judgment in responding to specific circumstances. Rather, this guidance is intended to assist in interpreting the statutory definition so that it may be rationally and thoughtfully applied in specific contexts in a manner fully consistent with the legislative intent.

1. *In general: The statutory definition of ''withholding of medically indicated treatment.''*

Section 1340.15(b)(2) of the final rule defines the term ''withholding of medically indicated treatment'' with a definition identical to that which appears in section 3(3) of the Act (as amended by section 121(3) of the Child Abuse Amendments of 1984).

This definition has several main features. First, it establishes the basic principle that all disabled infants with life-threatening conditions must be given medically indicated treatment, defined in terms of action to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration or medication) which, in the treating physician's (or physicians') reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions.

Second, the statutory definition spells out three circumstances under which treatment is not considered ''medically indicated.'' These are when, in the treating physician's (or physicians') reasonable medical judgment:

—The infant is chronically and irreversibly comatose:

—The provision of such treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of survival of the infant; or

—The provision of such treatment would be virtually futile in terms of survival of the infant and the treatment itself under such circumstances would be inhumane.

The third key feature of the statutory definition is that even when one of these three circumstances is present, and thus the failure to provide treatment is not a ''withholding of medically indicated treatment,'' the infant must nonetheless be provided with appropriate nutrition, hydration, and medication.

Fourth, the definition's focus on the potential effectiveness of treatment in ameliorating or correcting life-threatening conditions makes clear that it does not sanction decisions based on subjective opinions about the future ''quality of life'' of a retarded or disabled person.

The fifth main feature of the statutory definition is that its operation turns substantially on the ''reasonable medical judgment'' of the treating physician or physicians. The term ''reasonable medical judgment'' is defined in §1340.15(b)(3)(ii) of the final rule, as it was in the Conference Committee Report on the Act, as a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

The Department's interpretations of key terms in the statutory definition are fully consistent with these basic principles reflected in the definition. The discussion that follows is organized under headings that generally correspond to the proposed clarifying definitions that appeared in the proposed rule but were not adopted in the final rule. The discussion also attempts to analyze and respond to significant comments received by the Department.

2. *The term ''life-threatening condition''.*

Clause (b)(3)(ii) of the proposed rule proposed a definition of the term ''life-threatening condition.'' This term is used in the statutory definition in the following context:

[T]he term ''withholding of medically indicated treatment'' means the failure to respond to the infant's *life-threatening conditions* by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions [, except that] * * *. [Emphasis supplied].

It appears to the Department that the applicability of the statutory definition might be uncertain to some people in cases where a condition may not, strictly speaking, by itself be life-threatening, but where the condition significantly increases the risk of the onset of complications that may threaten the life of the infant. If medically indicated treatment is available for such a condition, the failure to provide it may result in the onset of complications that, by the time the condition becomes life-threatening in the strictest sense, will eliminate or reduce the potential effectiveness of any treatment. Such a result cannot, in the Department's view, be squared with the Congressional intent.

Thus, the Department interprets the term ''life-threatening condition'' to include a condition that, in the treating physician's or physicians' reasonable medical judgment, significantly increases the risk of the onset of complications that may threaten the life of the infant.

In response to comments that the proposed rule's definition was potentially overinclusive by covering any condition that one could argue ''may'' become life-threatening, the Department notes that the statutory standard of ''the treating physician's or physicians' reasonable medical judgment'' is incorporated in the Department's interpretation, and is fully applicable.

Other commenters suggested that this interpretation would bring under the scope of the definition many irreversible conditions for which no corrective treatment is available. This is certainly not the intent. The Department's interpretation implies nothing about whether, or what, treatment should be provided. It simply makes clear that the criteria set forth in the statutory definition for evaluating whether, or what, treatment should be provided are applicable. That is just the start, not the end, of the analysis. The analysis then takes fully into account the reasonable medical judgment regarding potential effectiveness of possible treatments, and the like.

Other comments were that it is unnecessary to state any interpretation because reasonable medical judgment commonly deems the conditions described as life-threatening and responds accordingly. HHS agrees that this is common practice followed under reasonable medical judgment, just as all the standards incorporated in the statutory definition reflect common practice followed under reasonable medical judgment. For the reasons stated above, however, the Department believes it is useful to say so in these interpretative guidelines.

3. *The term ''treatment'' in the context of adequate evaluation.*

Clause (b)(3)(ii) of the proposed rule proposed a definition of the term ''treatment.'' Two separate concepts were dealt with in clause (A) and (B), respectively, of the proposed rule. Both of these clauses were designed to ensure that the Congressional intent regarding the issues to be considered

under the analysis set forth in the statutory definition is fully effectuated. Like the guidance regarding ''life-threatening condition,'' discussed above, the Department's interpretations go to the applicability of the statutory analysis, not its result.

The Department believes that Congress intended that the standard of following reasonable medical judgment regarding the potential effectiveness of possible courses of action should apply to issues regarding adequate medical evaluation, just as it does to issues regarding adequate medical intervention. This is apparent Congressional intent because Congress adopted, in the Conference Report's definition of ''reasonable medical judgment,'' the standard of adequate knowledge about the case and the treatment possibilities with respect to the medical condition involved.

Having adequate knowledge about the case and the treatment possibilities involved is, in effect, step one of the process, because that is the basis on which ''reasonable medical judgment'' will operate to make recommendations regarding medical intervention. Thus, part of the process to determine what treatment, if any, ''will be most likely to be effective in ameliorating or correcting'' all life-threatening conditions is for the treating physician or physicians to make sure they have adequate information about the condition and adequate knowledge about treatment possibilities with respect to the condition involved. The standard for determining the adequacy of the information and knowledge is the same as the basic standard of the statutory definition: reasonable medical judgment. A reasonably prudent physician faced with a particular condition about which he or she needs additional information and knowledge of treatment possibilities would take steps to gain more information and knowledge by, quite simply, seeking further evaluation by, or consultation with, a physician or physicians whose expertise is appropriate to the condition(s) involved or further evaluation at a facility with specialized capabilities regarding the conditions(s) involved.

Thus, the Department interprets the term ''treatment'' to include (but not be limited to) any further evaluation by, or consultation with, a physician or physicians whose expertise is appropriate to the condition(s) involved or further evaluation at a facility with specialized capabilities regarding the condition(s) involved that, in the treating physician's or physicians' reasonable medical judgment, is needed to assure that decisions regarding medical intervention are based on adequate knowledge about the case and the treatment possibilities with respect to the medical conditions involved.

This reflects the Department's interpretation that failure to respond to an infant's life-threatening conditions by obtaining any further evaluations or consultations that, in the treating physician's reasonable medical judgment, are necessary to assure that decisions regarding medical intervention are based on adequate knowledge about the case and the treatment possibilities involved constitutes a ''withholding of medically indicated treatment.'' Thus, if parents refuse to consent to such a recommendation that is based on the treating physician's reasonable medical judgment that, for example, further evaluation by a specialist is necessary to permit reasonable medical judgments to be made regarding medical intervention, this would be a matter for appropriate action by the child protective services system.

In response to comments regarding the related provision in the proposed rule, this interpretative guideline makes quite clear that this interpretation does not deviate from the basic principle of reliance on reasonable medical judgment to determine the extent of the evaluations necessary in the particular case. Commenters expressed concerns that the provision in the proposed rule would intimidate physicians to seek transfer of seriously ill infants to tertiary level facilities much more often than necessary, potentially resulting in diversion of the limited capacities of these facilities away from those with real needs for the specialized care, unnecessary separation of infants from their parents when equally beneficial treatment could have been provided at the community or regional hospital, inappropriate deferral of therapy while time-consuming arrangements can be affected, and other counterproductive ramifications. The Department intended no intimidation, prescription or similar influence on reasonable medical judgment, but rather, intended only to affirm that it is the Department's interpretation that the reasonable medical judgment standard applies to issues of medical evaluation, as well as issues of medical intervention.

4. *The term ''treatment'' in the context of multiple treatments.*

Clause (b)(3)(iii)(B) of the proposed rule was designed to clarify that, in evaluating the potential effectiveness of a particular medical treatment or surgical procedure that can only be reasonably evaluated in the context of a complete potential treatment plan, the ''treatment'' to be evaluated under the standards of the statutory definition includes the multiple medical treatments and/or surgical procedures over a period of time that are designed to ameliorate or correct a life-threatening condition or conditions. Some commenters stated that it could be construed to require the carrying out of a long process of medical treatments or surgical procedures regardless of the lack of success of those done first. No such meaning is intended.

The intent is simply to characterize that which must be evaluated under the standards of the statutory definition, not to imply anything about the results of the evaluation. If parents refuse consent for a particular medical treatment or surgical procedure that by itself may not correct or ameliorate all life-threatening conditions, but is recommended as part of a total plan that involves multiple medical treatments and/or surgical procedures over a period of time that, in the treating physician's reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, that would be a matter for appropriate action by the child protective services system.

On the other hand, if, in the treating physician's reasonable medical judgment, the total plan will, for example, be virtually futile and inhumane, within the meaning of the statutory term, then there is no ''withholding of medically indicated treatment.'' Similarly, if a treatment plan is commenced on the basis of a reasonable medical judgment that there is a good chance that it will be effective, but due to a lack of success, unfavorable complications, or other factors, it becomes the treating physician's reasonable medical judgment that further treatment in accord with the prospective treatment plan, or alternative treatment, would be futile, then the failure to provide that treatment would not constitute a ''withholding of medically indicated treatment.'' This analysis does not divert from the reasonable medical judgment standard of the statutory definition; it simply makes clear the Department's interpretation that the failure to evaluate the potential effectiveness of a treatment plan as a whole would be inconsistent with the legislative intent.

Thus, the Department interprets the term ''treatment'' to include (but not be limited to) multiple medical treatments and/or surgical procedures over a period of time that are designed to ameliorate or correct a life-threatening condition or conditions.

5. *The term ''merely prolong dying.''*

Clause (b)(3)(v) of the proposed rule proposed a definition of the term ''merely prolong dying,'' which appears in the statutory definition. The proposed rule's provision stated that this term ''refers to situations where death is imminent and treatment will do no more than postpone the act of dying.''

Many commenters argued that the incorporation of the word ''imminent,'' and its connotation of immediacy, appeared to deviate from the Congressional intent, as developed in the course of the lengthy legislative negotiations, that reasonable medical judgments can and do result in nontreatment decisions regarding some conditions for which treatment will do no more than temporarily postpone a death that will occur in the near future, but not necessarily within days. The six principal sponsors of the compromise amendment also strongly urged deletion of the word ''imminent.''

The Department's use of the term ''imminent'' in the proposed rule was not intended to convey a meaning not fully consonant with the statute. Rather, the Department intended that the word ''imminent'' would be applied in the context of the condition involved, and in such a context, it would not be understood to specify a particular number of days. As noted in the preamble to the proposed rule, this clarification was proposed to make clear that the ''merely prolong dying'' clause of the statutory definition would not be applicable to situations where treatment will not totally correct a medical condition but will give a patient many years of life. The Department continues to hold to this view.

To eliminate the type of misunderstanding evidenced in the comments, and to assure consistency with the statutory definition, the word ''imminent'' is not being adopted for purposes of these interpretative guidelines.

The Department interprets the term ''merely prolong dying'' as referring to situations where the prognosis is for death and, in the treating physician's (or physicians') reasonable medical judgment, further or alternative treatment would not alter the prognosis in an extension of time that would not render the treatment futile.

Thus, the Department continues to interpret Congressional intent as not permitting the ''merely prolong dying'' provision to apply where many years of life will result from the provision of treatment, or where the prognosis is not for death in the near future, but rather the more distant future. The Department also wants to make clear it does not intend the connotations many commenters associated with the word ''imminent.'' In addition, contrary to the impression some commenters appeared to have regarding the proposed rule, the Department's interpretation is that reasonable medical judgments will be formed on the basis of knowledge about the condition(s) involved, the degree of inevitability of death, the probable effect of any potential treatments, the projected time period within which death will probably occur, and other pertinent factors.

6. *The term ''not be effective in ameliorating or correcting all of the infant's life threatening conditions'' in the context of a future life-threatening condition.*

Clause (b)(3)(vi) of the proposed rule proposed a definition of the term ''not be effective in ameliorating or correcting all the infant's life-threatening conditions'' used in the statutory definition of ''withholding of medically indicated treatment.''

The basic point made by the use of this term in the statutory definition was explained in the Conference Committee Report:

Under the definition, if a disabled infant suffers more than one life-threatening condition and, in the treating physician's or physicians' reasonable medical judgment, there is no effective treatment for one of those conditions, then the infant is not covered by the terms of the amendment (except with respect to appropriate nutrition, hydration, and medication) concerning the withholding of medically indicated treatment.

H. Conf. Rep. No. 1038, 98th Cong., 2d Sess. 41 (1984).

This clause of the proposed rule dealt with the application of this concept in two contexts: First, when the nontreatable condition will not become life-threatening in the near future, and second, when humaneness makes palliative treatment medically indicated.

With respect to the context of a future life-threatening condition, it is the Department's interpretation that the term ''not be effective in ameliorating or correcting all of the infant's life-threatening conditions'' does not permit the withholding of treatment on the grounds that one or more of the infant's life-threatening conditions, although not life-threatening in the near future, will become life-threatening in the more distant future.

This clarification can be restated in the terms of the Conference Committee Report excerpt, quoted just above, with the italicized words indicating the clarification, as follows: Under the definition, if a disabled infant suffers from more than one life-threatening condition and, in the treating physician's or physicians' reasonable medical judgment, there is no effective treatment for one of these conditions *that threatens the life of the infant in the near future,* then the infant is not covered by the terms of the amendment (except with respect to appropriate nutrition, hyrdation, and medication) concerning the withholding of medically indicated treatment; *but if the nontreatable condition will not become life-threatening until the more distant future, the infant is covered by the terms of the amendment.*

Thus, this interpretative guideline is simply a corollary to the Department's interpretation of ''merely prolong dying,'' stated above, and is based on the same understanding of Congressional intent, indicated above, that if a condition will not become life-threatening until the more distant future, it should not be the basis for withholding treatment.

Also for the same reasons explained above, the word ''imminent'' that appeared in the proposed definition is not adopted for purposes of this interpretative guideline. The Department makes no effort to draw an exact line to separate ''near future'' from ''more distant future.'' As noted above in connection with the term ''merely prolong dying,'' the statutory definition provides that it is for reasonable medical judgment, applied to the specific condition and circumstances involved, to determine whether the prognosis of death, because of its nearness in time, is such that treatment would not be medically indicated.

7. *The term ''not be effective in ameliorating or correcting all life-threatening conditions'' in the context of palliative treatment.*

Clause (b)(3)(iv)(B) of the proposed rule proposed to define the term ''not be effective in ameliorating or correcting all life-threatening conditions'' in the context where the issue is not life-saving treatment, but rather palliative treatment to make a condition more tolerable. An example of this situation is where an infant has more than one life-threatening condition, at least one of which is not treatable and will cause death in the near future. Palliative treatment is available, however, that will, in the treating physician's reasonable medical judgment, relieve severe pain associated with one of the conditions. If it is the treating physician's reasonable medical judgment that this palliative treatment will ameliorate the infant's *overall* condition, taking all individual conditions into account, even though it would not ameliorate or correct *each* condition, then this palliative treatment is medically indicated. Simply put, in the context of ameliorative treatment that will make a condition more tolerable, the term ''not be effective in ameliorating or correcting *all* life-threatening conditions'' should not be construed as meaning *each and every* condition, but rather as referring to the infant's *overall* condition.

HHS believes Congress did not intend to exclude humane treatment of this kind from the scope of ''medically indicated treatment.'' The Conference Committee Report specifically recognized that ''it is appropriate for a physician, in the exercise of reasonable medical judgment, to consider that factor [humaneness] in selecting among effective treatments.'' H. Conf. Rep. No. 1038, 98th Cong., 2d Sess. 41 (1984). In addition, the articulation in the statutory definition of circumstances in which treatment need not be provided specifically states that ''appropriate nutrition, hydration, and medication'' must nonetheless be provided. The inclusion in this proviso of medication, one (but not the only) potential palliative treatment to relieve severe pain, corroborates the Department's interpretation that such palliative treatment that will ameliorate the infant's overall condition, and that in the exercise of reasonable medical judgment is humane and medically indicated, was not intended by Congress to be outside the scope of the statutory definition.

Thus, it is the Department's interpretation that the term ''not be effective in ameliorating or correcting all of the infant's life-threatening conditions'' does not permit the withholding of ameliorative treatment that, in the treating physician's or physicians' reasonable medical judgment, will make a condition more tolerable, such as providing palliative treatment to relieve severe pain, even if the overall prognosis, taking all conditions into account, is that the infant will not survive.

A number of commenters expressed concerns about some of the examples contained in the preamble of the proposed rule that discussed the proposed definition relating to this point, and stated that, depending on medical complications, exact prognosis, relationships to other conditions, and other factors, the treatment suggested in the examples might not necessarily be the treatment that reasonable medical judgment would decide would be most likely to be effective. In response to these comments, specific diagnostic examples have not been included in this discussion, and this interpretative guideline makes clear that the ''reasonable medical judgment'' standard applies on this point as well.

Other commenters argued that an interpretative guideline on this point is unnecessary because reasonable medical judgment would commonly provide ameliorative or palliative treatment in the circumstances described. The Department agrees that such treatment is common in the exercise of resaonable medical judgment, but believes it useful, for the reasons stated, to provide this interpretative guidance.

8. *The term ''virtually futile''.*

Clause (b)(3)(vii) of the proposed rule proposed a definition of the term ''virtually futile'' contained in the statutory definition. The context of this term in the statutory definition is:

[T]he term ''withholding of medically indicated treatment'' * * * does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment, * * * the provision of such treatment would be *virtually futile* in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane. Section 3(3)(C) of the Act [emphasis supplied].

The Department interprets the term ''virtually futile'' to mean that the treatment is highly unlikely to prevent death in the near future.

This interpretation is similar to those offered in connection with ''merely prolong dying'' and ''not be effective in ameliorating or correcting all life-threatening conditions'' in the context of a future life-threatening condition, with the addition of a characterization of likelihood that corresponds to the statutory word ''virtually.'' For the reasons explained in the discussion of ''merely prolong dying,'' the word ''imminent'' that was used in the proposed rule has not been adopted for purposes of this interpretative guideline.

Some commenters expressed concern regarding the words ''highly unlikely,'' on the grounds that such certitude is often medically impossible. Other commenters urged that a distinction should be made between generally utilized treatments and experimental treatments. The Department does not believe any special clarifications are needed to respond to these comments. The basic standard of reasonable medical judgment applies to the term ''virtually futile.'' The Department's interpretation does not suggest an impossible or unrealistic standard of certitude for any medical judgment. Rather, the standard adopted in the law is that there be a ''reasonable medical judgment.'' Similarly, reasonable medical judgment is the standard for evaluating potential treatment possibilities on the basis of the actual circumstances of the case. HHS does not believe it would be helpful to try to establish distinctions based on characterizations of the degree of general usage, extent of validated efficacy data, or other similar factors. The factors considered in the exercise of reasonable medical judgment, including any factors relating to human subjects experimentation standards, are not disturbed.

9. *The term ''the treatment itself under such circumstances would be inhumane.''*

Clause (b)(3)(viii) of the proposed rule proposed a definition of the term ''the treatment itself under such circumstances would be inhumane,'' that appears in the statutory definition. The context of this term in the statutory definition is that it is not a ''withholding of medically indicated treatment'' to withhold treatment (other than appropriate nutrition, hydration, or medication) when, in the treating physician's reasonable medical judgment, ''the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.'' §3(3)(C) of the Act.

The Department interprets the term ''the treatment itself under such circumstances would be inhumane'' to mean the treatment itself involves significant medical contraindications and/or significant pain and suffering for the infant that clearly outweigh the very slight potential benefit of the treatment for an infant highly unlikely to survive. (The Department further notes that the use of the term ''inhumane'' in this context is not intended to suggest that consideration of the humaneness of a particular treatment is not legitimate in any other context; rather, it is recognized that it is appropriate for a physician, in the exercise of reasonable

medical judgment, to consider that factor in selecting among effective treatments.)

Other clauses of the statutory definition focus on the expected *result* of the possible treatment. This provision of the statutory definition adds a consideration relating to the *process* of possible treatment. It recognizes that in the exercise of reasonable medical judgment, there are situations where, although there is some slight chance that the treatment will be beneficial to the patient (the potential treatment is considered *virtually* futile, rather than futile), the potential benefit is so outweighed by negative factors relating to the process of the treatment itself that, under the circumstances, it would be inhumane to subject the patient to the treatment.

The Department's interpretation is designed to suggest the factors that should be taken into account in this difficult balance. A number of commenters argued that the interpretation should permit, as part of the evaluation of whether treatment would be inhumane, consideration of the infant's future ''quality of life.''

The Department strongly believes such an interpretation would be inconsistent with the statute. The statute specifies that the provision applies only where the treatment would be ''virtually futile in terms of the survival of the infant,'' and the ''treatment *itself* under such circumstances would be inhumane.'' (Emphasis supplied.) The balance is clearly to be between the very slight chance that treatment will allow the infant to survive and the negative factors relating to the process of the treatment. These are the circumstances under which reasonable medical judgment could decide that the treatment itself would be inhumane.

Some commenters expressed concern about the use of terms such as ''clearly outweight'' in the description of this balance on the grounds that such precision is impractical. Other commenters argued that this interpretation could be construed to mandate useless and painful treatment. The Department believes there is no basis for these worries because ''reasonable medical judgment'' is the governing standard. The interpretative guideline suggests nothing other than application of this standard. What the guideline does is set forth the Department's interpretation that the statute directs the reasonable medical judgment to considerations relating to the slight chance of survival and the negative factors regarding the process of treatment and to the balance between them that would support a conclusion that the treatment itself would be inhumane.

Other commenters suggested adoption of a statement contained in the Conference Committee Report that makes clear that the use of the term ''inhumane'' in the statute was not intended to suggest that consideration of the humaneness of a particular treatment is not legitimate in any other context. The Department has adopted this statement as part of its interpretative guideline.

10. *Other terms.*

Some comments suggested that the Department clarify other terms used in the statutory definition of ''withholding of medically-'indicated treatment,'' such as the term ''appropriate nutrition, hydration or medication'' in the context of treatment that may not be withheld, notwithstanding the existence of one of the circumstances under which the failure to provide treatment is not a ''withholding of medically indicated treatment.'' Some commenters stated, for example, that very potent pharmacologic agents, like other methods of medical intervention, can produce results accurately described as accomplishing no more than to merely prolong dying, or be futile in terms of the survival of the infant, or the like, and that, therefore, the Department should clarify that the proviso regarding ''appropriate nutrition, hydration or medication'' should not be construed entirely independently of the circumstances under which other treatment need not be provided.

The Department has not adopted an interpretative guideline on this point because it appears none is necessary. As noted above in the discussion of palliative treatment, the Department recognizes that there is no absolutely clear line between medication and treatment other than medication that would justify excluding the latter from the scope of palliative treatment that reasonable medical judgment would find medically indicated, notwithstanding a very poor prognosis.

Similarly, the Department recognizes that in some circumstances, certain pharmacologic agents, not medically indicated for palliative purposes, might, in the exercise of reasonable medical judgment, also not be indicated for the purpose of correcting or ameliorating any particular condition because they will, for example, merely prolong dying. However, the Department believes the word ''appropriate'' in this proviso of the statutory definition is adequate to permit the exercise of reasonable medical judgment in the scenario referred to by these commenters.

At the same time, it should be clearly recognized that the statute is completely unequivocal in requiring that all infants receive ''appropriate nutrition, hydration, and medication,'' regardless of their condition or prognosis.

[50 FR 14889, Apr. 15, 1985, as amended at 55 FR 27640, July 5, 1990]

SUBCHAPTER F—THE ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES, FAMILY AND YOUTH SERVICES BUREAU

PART 1351—RUNAWAY AND HOMELESS YOUTH PROGRAM

Subpart A—Definition of Terms

Subpart B—Runaway and Homeless Youth Program Grant

Subpart C—Additional Requirements

AUTHORITY: 42 U.S.C. 5701.

SOURCE: 43 FR 55635, Nov. 28, 1978, unless otherwise noted.

EDITORIAL NOTE: For nomenclature changes to this part see 54 FR 20854, May 15, 1989, and 55 FR 5601, Feb. 16, 1990.

Subpart A—Definition of Terms

§1351.1 Significant terms.

For the purposes of this part:

(a) *Aftercare services* means the provision of services to runaway or otherwise homeless youth and their families, following the youth's return home or placement in alternative living arrangements which assist in alleviating the problems that contributed to his or her running away or being homeless.

(b) *Area* means a specific neighborhood or section of the locality in which the runaway and homeless youth project is or will be located.

(c) *Coordinated networks of agencies* means an association of two or more private agencies, whose purpose is to develop or strengthen services to runaway or otherwise homeless youth and their families.

(d) *Counseling services* means the provision of guidance, support and advice to runaway or otherwise homeless youth and their families designed to alleviate the problems which contributed to the youth's running away or being homeless, resolve intrafamily problems, to reunite such youth with their families, whenever appropriate, and to help them decide upon a future course of action.

(e) *Demonstrably frequented by or reachable* means located in an area in which runaway or otherwise homeless youth congregate or an area accessible to such youth by public transportation or by the provision of transportation by the runaway and homeless youth project itself.

(f) *Homeless youth* means a person under 18 years of age who is in need of services and without a place of shelter where he or she receives supervision and care.

(g) *Juvenile justice system* means agencies such as, but not limited to juvenile courts, law enforcement, probation, parole, correctional institutions, training schools, and detention facilities.

(h) *Law enforcement structure* means any police activity or agency with

legal responsibility for enforcing a criminal code including, police departments and sheriffs offices.

(i) *A locality* is a unit of general government—for example, a city, county, township, town, parish, village, or a combination of such units. Federally recognized Indian tribes are eligible to apply for grants as local units of government.

(j) *Runaway and homeless youth project* means a locally controlled human service program facility outside the law enforcement structure and the juvenile justice system providing temporary shelter, either directly or through other facilities, counseling and aftercare services to runaway or otherwise homeless youth.

(k) *Runaway youth* means a person under 18 years of age who absents himself or herself from home or place of legal residence without the permission of his or her family.

(l) *Short-term training* means the provision of local, State, or regionally based instruction to runaway or otherwise homeless youth service providers in skill areas that will directly strengthen service delivery.

(m) *A State* includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

(n) *Technical assistance* means the provision of expertise or support for the purpose of strengthening the capabilities of grantee organizations to deliver services.

(o) *Temporary shelter* means the provision of short-term (maximum of 15 days) room and board and core crisis intervention services, on a 24-hour basis, by a runaway and homeless youth project.

[43 FR 55635, Nov. 28, 1978, as amended at 54 FR 20854, May 15, 1989; 55 FR 5601, Feb. 16, 1990]

Subpart B—Runaway and Homeless Youth Program Grant

§ 1351.10 What is the purpose of the Runaway and Homeless Youth Program grant?

The purpose of the Runaway and Homeless Youth Program grant is to establish or strengthen existing or proposed community-based runaway and homeless youth projects to provide temporary shelter and care to runaway or otherwise homeless youth who are in need of temporary shelter, counseling and aftercare services. The Department is concerned about the increasing numbers of youth who leave, and stay away from, their homes without permission of their families. There is also national concern about runaway and homeless youth who have no resources, who live on the street, and who represent law enforcement problems in the communities to which they run. The problems of runaway or otherwise homeless youth should not be the responsibility of already overburdened police departments and juvenile justice authorities. Rather, Congress intends that the responsibility for locating, assisting, and returning such youth should be placed with low-cost, community-based human service programs.

§ 1351.11 Who is eligible to apply for a Runaway and Homeless Youth Program grant?

States localities, private entities, and coordinated networks of such entities are eligible to apply for a Runaway and Homeless Youth Program grant unless they are part of the law enforcement structure or the juvenile justice system.

[54 FR 20855, May 15, 1989; 55 FR 5601, Feb. 16, 1990]

§ 1351.12 Who gets priority for the award of a Runaway and Homeless Youth Program grant?

In making Runaway and Homeless Youth Program grants, HHS gives priority to those private agencies which have had past experience in dealing with runaway or otherwise homeless youth. HHS also gives priority to applicants whose total grant requests for services to runaway or otherwise homeless youth are less than $100,000 and whose project budgets, considering all funding sources, are smaller than $150,000. Past experience means that a major activity of the agency has been the provision of temporary shelter, counseling, and referral services to runaway or otherwise homeless youth and their families, either directly or

through linkages established with other community agencies.

§ 1351.13 What are the Federal and non-Federal match requirements under a Runaway and Homeless Youth grant?

HHS requires a non-Federal share which is equal to at least 10 percent of the Federal funds that will be received under this grant program for any fiscal year.

[54 FR 20855, May 15, 1989; 55 FR 5601, Feb. 16, 1990]

§ 1351.14 What is the period for which a grant will be awarded?

(a) The initial notice of grant award specifies how long HHS intends to support the project without requiring the project to recompete for funds. This period, called the project period, will not exceed three years.

(b) Generally the grant will initially be for one year. A grantee must submit a separate application to have the support continued for each subsequent year. Continuation awards within the project period will be made provided the grantee has made satisfactory progress, funds are available, and HHS determines that continued funding is in the best interest of the Government.

§ 1351.15 What costs are supportable under a Runaway and Homeless Youth Program grant?

Costs which can be supported include, but are not limited to, temporary shelter, referral services, counseling services, aftercare services, and staff training. Costs for acquisition and renovation of existing structures may not normally exceed 15 percent of the grant award. HHS may waive this limitation upon written request under special circumstances based on demonstrated need.

§ 1351.16 What costs are not allowable under a Runaway and Homeless Youth Program grant?

A Runaway and Homeless Youth Progam grant does not cover the cost of constructing new facilities.

§ 1351.17 How is application made for a Runaway and Homeless Youth Program grant?

HHS publishes annually in the FEDERAL REGISTER a program announcement of grant funds available under the Runaway and Homeless Youth Program Act. The program announcement states the amount of funds available, program priorities for funding, and criteria for evaluating applications in awarding grants. The announcement also describes specific procedures for receipt and review of applications. An applicant should:

(a) Obtain a program announcement from the FEDERAL REGISTER or from one of HHS's 10 Regional Offices in Boston, New York, Philadelphia, Atlanta, Chicago, Dallas, Kansas City, Denver, San Francisco, and Seattle;

(b) Obtain an application package from one of HHS's Regional Offices; and

(c) Submit a completed application to the Grants Management Office at the appropriate Regional Office.

[43 FR 55635, Nov. 28, 1978, as amended at 48 FR 29202, June 24, 1983]

§ 1351.18 What criteria has HHS established for deciding which Runaway and Homeless Youth Program grant applications to fund?

In reviewing applications for a Runaway and Homeless Youth Program grant, HHS takes into consideration a number of factors, including:

(a) Whether the application meets one or more of the program's funding priorities; (see § 1351.12)

(b) The need for Federal support based on the number of runaway or otherwise homeless youth in the area in which the runaway and homeless youth project is or will be located;

(c) The availability of services to runaway or otherwise homeless youth in the area in which the runaway and homeless youth project is located;

(d) Whether there is a minimum residential capacity of four and a maximum residential capacity not to exceed 20 youth with a ratio of staff to youth sufficient to assure adequate supervision and treatment;

(e) Plans for meeting the best interests of the youth involving, when possible, both the youth and the family. These must include contacts with the families. This contact should be made within 24 hours, but must be made no more than 72 hours following the time of the youth's admission into the runaway and homeless youth project. The plans must also include assuring the youth's safe return home or to local government officials or law enforcement officials and indicate efforts to provide appropriate alternative living arrangements.

(f) Plans for the delivery of aftercare or counseling services to runaway or otherwise homeless youth and their families;

(g) Whether the estimated cost to the Department for the runaway and homeless youth project is reasonable considering the anticipated results;

(h) Whether the proposed personnel are well qualified and the applicant agency has adequate facilities and resources;

(i) Whether the proposed project design, if well executed, is capable of attaining program objectives;

(j) The consistency of the grant application with the provisions of the Act and these regulations.

§ 1351.19 What additional information should an applicant or grantee have about a Runaway and Homeless Youth Program grant?

(a) Several other HHS rules and regulations apply to applicants for or recipients of Runaway and Homeless Youth Program grants. These include:

(1) The provisions of 45 CFR part 74 pertaining to the Administration of Grants;

(2) The provisions of 45 CFR part 16, Departmental Grants Appeal Process, and the provisions of Informal Grant Appeal Procedures (Indirect Costs) in volume 45 CFR part 75;

(3) The provisions of 45 CFR part 80 and 45 CFR part 81 pertaining to nondiscrimination under programs receiving Federal assistance, and hearing procedures;

(4) The provisions of 45 CFR part 84 pertaining to discrimination on the basis of handicap;

(5) The provisions of 45 CFR part 46 pertaining to protection of human subjects.

(b) Several program policies regarding confidentiality of information, treatment, conflict of interest and State protection apply to recipients of Runaway and Homeless Youth Program grants. These include:

(1) *Confidential information.* All information including lists of names, addresses, photographs, and records of evaluation of individuals served by a runaway and homeless youth project shall be confidential and shall not be disclosed or transferred to any individual or to any public or private agency without written consent of the youth and family. Youth served by a runaway and homeless youth project shall have the right to review their records; to correct a record or file a statement of disagreement; and to be apprised of the individuals who have reviewed their records. Procedures shall be established for the training of project staff in the protection of these rights and for the secure storage of records.

(2) *Medical, psychiatric or psychological treatment.* No youth shall be subject to medical, psychiatric or psychological treatment without the consent of the youth and family unless otherwise permitted by State law.

(3) *Conflict of interest.* Employees or individuals participating in a program or project under the Act shall not use their positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business or other ties.

(4) *State law protection.* HHS policies regarding confidential information and experimentation and treatment shall not apply if HHS finds that State law is more protective of the rights of runaway or otherwise homeless youth.

(c) Nothing in the Runaway and Homeless Youth Act or these regulations gives the Federal Government control over the staffing and personnel decisions regarding individuals hired by a runaway and homeless youth project receiving Federal funds.

Subpart C—Additional Requirements

§ 1351.20 What are the additional requirements under a Runaway and Homeless Youth Program grant?

(a) To improve the administration of the Runaway and Homeless Youth Program by increasing the capability of the runaway and homeless youth service providers to deliver services, HHS will require grantees to accept technical assistance and short-term training as a condition of funding for each budget period.

(1) Technical assistance may be provided in, but not limited to, such areas as:

- Program Management,
- Fiscal Management,
- Development of coordinated networks of private nonprofit agencies to provide services, and
- Low cost community alternatives for runaway or otherwise homeless youth.

(2) Short-term training may be provided in, but not limited to, such areas as:

- Shelter facility staff development,
- Aftercare services or counseling,
- Fund raising techniques,
- Youth and Family counseling, and
- Crisis intervention techniques.

(b) Grantees will be required to coordinate their activities with the 24-hour National toll-free communication system which links runaway and homeless youth projects and other service providers with runaway or otherwise homeless youth.

(c) Grantees will also be required to submit statistical reports profiling the clients served. The statistical reporting requirements are mandated by the Act which states that ''runaway and homeless youth projects shall keep adequate statistical records profiling the children and families which it serves . . .''

SUBCHAPTER G—THE ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES, FOSTER CARE MAINTENANCE PAYMENTS, ADOPTION ASSISTANCE, CHILD WELFARE SERVICES

PART 1355—GENERAL

AUTHORITY: 42 U.S.C. 620 et seq., 42 U.S.C. 670 et seq.; 42 U.S.C. 1302.

§ 1355.10 Scope.

Part 1355 applies to State programs and contains general requirements for Federal financial participation under titles IV–E and IV–B of the Social Security Act, as amended.

[48 FR 23114, May 23, 1983]

§ 1355.20 Definitions.

(a) Unless otherwise specified, the following terms as they appear in 45 CFR parts 1355, 1356 and 1357 of this title are defined as follows—

Act means the Social Security Act, as amended.

ACYF means Administration for Children, Youth and Families, Office of Human Development Services, U.S. Department of Health and Human Services.

Adoption means the method provided by State law which establishes the legal relationship of parent and child between persons who are not so related by birth, with the same mutual rights and obligations that exist between children and their birth parents. This relationship can only be termed ''adoption'' after the legal process is complete.

Child abuse and neglect means the definition contained in 45 CFR part 1340, Child Abuse and Neglect Prevention and Treatment Program.

Commissioner means the Commissioner for Children, Youth and Familes (ACYF), Office of Human Development Services, U.S. Department of Health and Human Services.

Department means the United States Department of Health and Human Services.

Detention facility in the context of the definition of child care institution in section 472(c)(2) of the Act means a physically restricting facility for the care of children who require secure custody pending court adjudication, court disposition, execution of a court order or after commitment.

Foster care means 24 hour substitute care for all children placed away from their parents or guardians and for whom the State agency has placement and care responsibility. This includes, but is not limited to, family foster homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes regardless of whether the foster care facility is licensed and whether payments are made by the State or local agency for the care of the child or whether there is Federal matching of any payments that are made.

Foster family home means the home of an individual or family licensed or approved by the State licensing or approval authority(ies) (or with respect to foster family homes on or near Indian reservations, by the tribal licensing or approval authority(ies)), that provides 24-hour out-of-home care for children. The term may include group homes, agency operated boarding homes or other facilities licensed or approved for the purpose of providing foster care by the State agency responsible for approval or licensing of such facilities.

State means the 50 States, the District of Columbia, and except in 45 CFR 1356.65 and 1356.70, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands and American Samoa.

State agency means the State agency administering or supervising the administration of the title IV–E and title IV–B State plans.

(b) Unless otherwise specified, the definitions contained in section 475 of the Act apply to all programs under titles IV–E and IV–B of the Act.

[48 FR 23114, May 23, 1983, as amended at 57 FR 30429, July 9, 1992; 58 FR 67924, Dec. 22, 1993]

§ 1355.21 State plan requirements for titles IV–E and IV–B.

(a) The State plans for titles IV–E and IV–B must provide for safeguards on the use and disclosure of information which meet the requirements contained in section 471(a)(8) of the Act.

(b) The State plans for titles IV–E and IV–B must provide for compliance with the Department's regulations listed in 45 CFR 1355.30.

(c) The State plans and plan amendments for titles IV–E and IV–B must be made available by the State agency for public review and inspection.

[48 FR 23114, May 23, 1983]

§ 1355.30 Other applicable regulations.

The procedures and requirements in the following sections of 45 CFR shall apply to all programs funded under the provisions of these regulations and titles IV–E and IV–B of the Social Security Act (the Act)—

(a) Part 16, Department Grant Appeals Process;

(b) Part 74, Administration of Grants, except that Subpart I, Financial Reporting Requirements, shall not apply. The Commissioner for Children, Youth and Families (the Commissioner), shall provide forms and instructions for financial reporting.

(c) Part 95, General Administration—Grant Programs (Public Assistance and Medical Assistance).

(d) Section 201.5, Grants (except that ACYF shall supply appropriate forms and instructions).

(e) Section 201.6, Withholding/Reduction of FFP. Pursuant to the requirements under § 1355.40 of this part for data collection, the only evidence relevant at hearings under § 201.6 are those matters related to the standards set forth in § 1355.40 and whether there were circumstances beyond the control of the State or its political subdivisions that should be considered by the Secretary.

(f) Section 201.7, Judicial review.

(g) Section 201.15, Deferral.

(h) Section 201.66, Repayment of Federal funds in installments.

(i) Section 204.1, Submittal of State plans for Governor's review.

(j) Section 205.5, Plan amendments.

(k) Section 205.10, Hearings.

(l) Section 205.50, Safeguarding information.

(m) Section 205.100, Single State agency.

(n) Section 205.101, Organization for administration.

(o) Section 205.150, Cost allocation plans.

[47 FR 30925, July 15, 1982, as amended at 58 FR 67924, Dec. 22, 1993]

§ 1355.40 Foster care and adoption data collection.

(a) *Scope of the data collection system.* (1) Each State which administers or supervises the administration of titles IV–B and IV–E must implement a system that begins to collect data on October 1, 1994. The first transmission must be received in ACF no later than May 15, 1995. The data reporting system must meet the requirements of § 1355.40(b) and electronically report certain data regarding children in foster care and adoption. The foster care

data elements are listed and defined in Appendix A to this part and the adoption data elements are listed and defined in Appendix B to this part.

(2) For the purposes of foster care reporting, each State's data transmission must include all children in foster care for whom the State title IV–B/IV–E agency has responsibility for placement, care, or supervision. This includes Native American children covered under section 427 protection on the same basis as any other children. For children in care less than 30 days, only a core set of information will be required, as noted in appendix A to this part. For children who enter foster care prior to October 1, 1995 and who are still in the system, core data elements will be required; in addition, States will also be required to report on the most recent case plan goal affecting those children. For children in out-of-State placement, the State placing the child and making the foster care payment submits and continually updates the data.

(3) For the purposes of adoption reporting, data are required to be transmitted by the State on all adopted children who were placed by the State title IV–B/IV–E agency, and on all adopted children for whom the State agency is providing adoption assistance (either ongoing or for nonrecurring expenses), care or services directly or by contract or agreement with other private or public agencies. Full adoption data as specified in appendix B to this part are required only for children adopted after the implementation date of October 1, 1994. For children adopted prior to October 1, 1994, who are continuing to receive title IV–E subsidies, aggregate data are to be reported. For a child adopted out-of-State, the State which placed the child submits the data.

(b) *Foster care and adoption reporting requirements.* (1) The State agency shall transmit semi-annually, within 45 days of the end of the reporting period (i.e., by May 15 and November 14), information on each child in foster care and each child adopted during the reporting period. The information to be reported consists of the data elements found in appendices A and B to this part. The data must be extracted from the data system as of the last day of the reporting period and must be submitted in electronic form as described in appendix C to this part and in record layouts as delineated in appendix D to this part.

(2) For foster care information, the child-specific data to be transmitted must reflect the data in the information system when the data are extracted. Dates of removal from the home and discharge from foster care must be entered in accordance with paragraph (d)(1) of this section. The date of the most recent periodic review (either administrative or court) must be entered for children who have been in foster care for more than nine months. Entry of this date constitutes State certification that the data on the child have been reviewed and are current.

(3) Adoption data are to be reported during the reporting period in which the adoption is legalized or, at the State's option, in the following reporting period if the adoption is legalized within the last 60 days of the reporting period. For a semi-annual period in which no adoptions have been legalized, States must report such an occurrence.

(4) A summary file of the semi-annual data transmission must be submitted and will be used to verify the completeness of the State's detailed submission for the reporting period.

(5) A variety of internal data consistency checks will be used to judge the internal consistency of the semi-annual detailed data submission. These are specified in Appendix E to this part.

(c) *Missing data standards.* (1) The term ''missing data'' refers to instances where no data have been entered, if applicable, for a particular data element. In addition, all data elements which fail a consistency check for a particular case will be converted to missing data. All data which are ''out of range'' (i.e., the response is beyond the parameters allowed for that particular data element) will also be converted to missing data. Details of the circumstances under which data will be converted to missing data are specified in appendix E to this part.

Data elements with responses of ''cannot be determined'' or ''not yet determined'' are not considered as having missing data.

(2) For missing data in excess of 10 percent for any one data element, the penalty will be applied.

(3) The penalties for missing data are specified in paragraph (e) of this section.

(d) *Timeliness of foster care data reports.* (1) For each child, a computer generated transaction date must reflect the actual date of data entry and must accompany the date of latest removal from the home and the date of exit from foster care. Ninety percent of the subject transactions must have been entered into the system within 60 days of the event (removal from home or discharge from foster care).

(2) Penalties shall be invoked as provided in paragraph (e) of this section.

(e) *Penalties.* (1) Failure by a State to meet any of the standards described in paragraphs (a) through (d) of this section is considered a substantial failure to meet the requirements of the title IV–E State plan. Penalties for substantial noncompliance will be assessed semi-annually against a State's title IV–E administrative cost reimbursement in an amount that is equal to no more than 10 percent of the State's annual share of title IV–B funds above the base appropriation of $141 million. The amount of incentive funds, section 427 of the Act, against which a penalty can be assessed will remain the same as the amount promulgated as being available to the States as of June 30, 1993, the date of issuance of the amount of section 427 funds for fiscal year 1993 (see Appendix F to this part). The penalties will be calculated and applied regardless of any determination of compliance with the requirements of section 427, and regardless of whether any State has withdrawn its certification with respect to section 427. Years One through three (October 1, 1994 through September 30, 1997) will be three penalty-free years of operation. Year Four (October 1, 1997 through September 30, 1998) will be at half penalty and Year Five (October 1, 1998 through September 30, 1999) and thereafter will be at full penalty. The maximum annual penalty is 20 percent.

(2) Penalties will be assessed semi-annually against a State's title IV–E administrative cost reimbursement for the period in which the noncompliance occurred and any subsequent period of noncompliance. Following a decision sustaining ACYF's proposed action, funds will be recovered until the State demonstrates, by submitting an acceptable report, that it will no longer fail to comply.

(3) Half of the maximum allowable assessed penalty for a given reporting period is applicable to foster care reporting and half to adoption reporting.

(4) The penalty for foster care reporting will be applied for any semi-annual period when a State fails to meet one or more of the following criteria:

(i) Fails to submit the report within 45 days of the end of the reporting period as specified in paragraphs (b)(1) and (b)(2) of this section; or

(ii) There is one or more element which exceeds the level of tolerance for missing data as specified in paragraphs (c)(1) and (c)(2) of this section; or

(iii) Fails to meet the timeliness standards as specified in paragraph (d)(1) of this section.

(5) The penalty for adoption reporting will be applied for any semi-annual period when a State fails to meet one or more of the following criteria:

(i) Fails to submit the report within 45 days of the end of the reporting period as specified in paragraphs (b)(1) and (b)(3) of this section; or

(ii) There is one or more element which exceeds the level of tolerance for missing data as specified in paragraphs (c)(1) and (c)(2) of this section.

(Information collection requirements contained in paragraphs (a) and (b) of this section were approved on August 22, 1994, by the Office of Management and Budget under Control Number 0980–0267).

[58 FR 67924, Dec. 22, 1993, as amended at 60 FR 40507, Aug. 9, 1995]

§ 1355.50 Purpose of this part.

This part sets forth the requirements and procedures States must meet in order to receive Federal financial participation for the planning, design, development, installation and operation of statewide automated child welfare

information systems authorized under section 474(a)(3)(c) of the Act.

[58 FR 67945, Dec. 22, 1993]

§ 1355.52 Funding authority for statewide automated child welfare information systems (SACWIS).

(a) States may receive Federal reimbursement at the 75 percent match rate for FY 1994, FY 1995 and FY 1996, and at the 50 percent level thereafter for expenditures related to the planning, design, development and installation of a statewide automated child welfare information system, to the extent such system:

(1) Provides for the State to collect and electronically report certain data required by section 479(b) of the Act and § 1355.40 of this part;

(2) To the extent practicable, provides for an interface with the State data collection system for child abuse and neglect;

(3) To the extent practicable, provides for an interface with and retrieval of information from the State automated information system that collects information relating to the eligibility of individuals under title IV–A of the Act; and

(4) Provides for more efficient, economical and effective administration of the programs carried out under a State plan approved under title IV–B and title IV–E.

(b) States may also be reimbursed for the full amount of expenditures for the hardware components for such systems at the rates provided under paragraph (a) of this section.

(c) Expenditures for the operation of the automated information system described in paragraph (a) of this section are eligible for FFP at the 50 percent matching rate.

[58 FR 67945, Dec. 22, 1993]

§ 1355.53 Conditions for approval of funding.

(a) As a condition of funding, the SACWIS must be designed, developed (or an existing system enhanced), and installed in accordance with an approved advance planning document (APD). The APD must provide for a design which, when implemented, will produce a comprehensive system, which is effective and efficient, to improve the program management and administration of the State plans for titles IV–B and IV–E as provided under this section.

(b) At a minimum, the system must provide for effective management, tracking and reporting by providing automated procedures and processes to:

(1) Meet the Adoption and Foster Care reporting requirements through the collection, maintenance, integrity checking and electronic transmission of the data elements specified by the Adoption and Foster Care Analysis and Reporting System (AFCARS) requirements mandated under section 479(b) of the Act and § 1355.40 of this part;

(2) Provide, for electronic exchanges and referrals, as appropriate, with the following systems within the State, unless the State demonstrates that such interface or integration would not be practicable because of systems limitations or cost constraints:

(i) Systems operated under title IV–A,

(ii) National Child Abuse and Neglect Data Systems (NCANDS),

(iii) Systems operated under title XIX, and

(iv) Systems operated under title IV–D;

(3) Support the provisions of section 422(a) by providing for the automated collection, maintenance, management and reporting of information on all children in foster care under the responsibility of the State, including statewide data from which the demographic characteristics, location, and goals for foster care children can be determined;

(4) Collect and manage information necessary to facilitate the delivery of client services, the acceptance and referral of clients, client registration, and the evaluation of the need for services, including child welfare services under title IV–B Subparts 1 and 2, family preservation and family support services, family reunificication and permanent placement;

(5) Collect and manage information necessary to determine eligibility for:

(i) The foster care program,

(ii) The adoption assistance program, and

(iii) The independent living program;

(6) Support necessary case assessment activities;

(7) Monitor case plan development, payment authorization and issuance, review and management, including eligibility determinations and redeterminations; and

(8) Ensure the confidentiality and security of the information and the system.

(c) A system established under paragraph (a) of this section may also provide support in meeting the following program functions:

(1) Resource management, including automated procedures to assist in managing service providers, facilities, contracts and recruitment activities associated with foster care and adoptive families;

(2) Tracking and maintenance of legal and court information, and preparation of appropriate notifications to relevant parties;

(3) Administration and management of staff and workloads;

(4) Licensing verification; and

(5) Risk analysis.

(d) The system may also provide for interface with other automated information systems, including, but not limited to, accounting and licensing systems, court and juvenile justice systems, vital statistics and education, as appropriate.

(e) If the cost benefit analysis submitted as part of the APD indicates that adherence to paragraphs (c) and (d) of this section would not be cost beneficial, final approval of the APD may be withheld until resolution is reached on the level of automation appropriate to meet the State's needs.

(f) A Statewide automated child welfare information system may be designed, developed and installed on a phased basis, in order to allow States to implement AFCARS requirements expeditiously, in accordance with section 479(b) of the Act, as long as the approved APD includes the State's plan for full implementation of a comprehensive system which meets all functional and data requirements as specified in paragraphs (a) and (b) of this section, and a system design which will support these enhancements on a phased basis.

(g) The system must perform Quality Assurance functions to provide for the review of case files for accuracy, completeness and compliance with Federal requirements and State standards.

[58 FR 67945, Dec. 22, 1993, as amended at 60 FR 26839, Mar. 19, 1995]

§ 1355.54 Submittal of advance planning documents.

The State title IV–E agency must submit an APD for a statewide automated child welfare information system, signed by the appropriate State official, in accordance with procedures specified by 45 CFR part 95, subpart F.

[58 FR 67946, Dec. 22, 1993]

§ 1355.55 Review and assessment of the system developed with enhanced funds.

(a) ACF will, on a continuing basis, review, assess and inspect the planning, design, development, installation and operation of the SACWIS to determine the extent to which such systems:

(1) Meet § 1355.53 of this chapter,

(2) Meet the goals and objectives stated in the approved APD,

(3) Meet the schedule, budget, and other conditions of the approved APD, and

(4) Comply with the automated data processing services and acquisitions procedures and requirements of 45 CFR part 95, subpart F.

(b) [Reserved]

[58 FR 67946, Dec. 22, 1993]

§ 1355.56 Failure to meet the conditions of the approved APD.

(a) If ACF finds that the State fails to meet any of the conditions cited in § 1355.53, or to substantially comply with the criteria, requirements and other undertakings prescribed by the approved APD, approval of the APD may be suspended.

(b) If the approval of an APD is suspended during the planning, design, development, installation, or operation of the system:

(1) The State will be given written notice of the suspension. This notice shall state:

(i) The reason for the suspension,

(ii) The date of the suspension,

(iii) Whether the suspended system complies with criteria for 50 percent FFP, and

(iv) The actions required by the State for future enhanced funding.

(2) The suspension will be effective as of the date the State failed to comply with the approved APD;

(3) The suspension shall remain in effect until ACF determines that such system complies with prescribed criteria, requirements, and other undertakings for future Federal funding.

(4) Should a State cease development of an approved system, either by voluntary withdrawal or as a result of Federal suspension, all Federal incentive funds invested to date that exceed the normal administrative FFP rate (50 percent) will be subject to recoupment.

[58 FR 67946, Dec. 22, 1993]

§ 1355.57 Cost allocation.

(a) All expenditures of a State to plan, design, develop, install, and operate the data collection and information retrieval system described in § 1355.53 of this part shall be treated as necessary for the proper and efficient administration of the State plan under title IV–E, without regard to whether the system may be used with respect to foster or adoptive children other than those on behalf of whom foster care maintenance payments or adoption assistance payments may be made under the State plan.

(b) Cost allocation and distribution for the planning, design, development, installation and operation must be in accordance with § 95.631 of this title and section 474(e) of the Act, if the SACWIS includes functions, processing, information collection and management, equipment or services that are not directly related to the administration of the programs carried out under the State plan approved under title IV–B or IV–E.

[58 FR 67946, Dec. 22, 1993]

APPENDIX A TO PART 1355—FOSTER CARE DATA ELEMENTS

Section I—Foster Care Data Elements

Data elements preceded by ''**'' are the only data elements required for children who have been in care less than 30 days. For children who entered care prior to October 1, 1995, data elements preceded by either ''**'' and ''***'' are the only data elements required. This means that, for these two categories of children, these are the only data elements to which the missing data standard will be applied.

I. General Information
- **A. State _____
- **B. Report date ___ (mo.) ___ (yr.)
- **C. Local Agency (County or Equivalent Jurisdiction) _____
- **D. Record Number _____
- E. Date of Most Recent Periodic Review (If Applicable) ___ (mo.) ___ (day) ___ (yr.)

II. Child's Demographic Information
- **A. Date of Birth ___ (mo.) ___ (day) ___ (yr.)
- **B. Sex _____
  - Male: 1
  - Female: 2
- **C. Race/Origin
  - 1. Race _____
    - White: 1
    - Black: 2
    - American Indian/Alaskan Native: 3
    - Asian/Pacific Islander: 4
    - Unable to Determine: 5
  - 2. Hispanic Origin _____
    - Yes: 1
    - No: 2
    - Unable to Determine: 3
- D. Has this child been clinically diagnosed as having a disability(ies)? _____
  - Yes: 1
  - No: 2
  - Not Yet Determined: 3
  - 1. If yes, indicate *each* type of disability found with a ''1''
    - Mental Retardation _____
    - Visually or Hearing Impaired _____
    - Physically Disabled _____
    - Emotionally Disturbed (DSM III)
    - Other Medically Diagnosed Condition Requiring Special Care _____
- E. 1. Has this child ever been adopted? _____
  - Yes: 1
  - No: 2
  - Unable to Determine: 3
  - 2. If yes, how old was the child when the adoption was legalized? _____
    - Less than 2 years old: 1
    - 2 to 5 years old: 2
    - 6 to 12 years old: 3
    - 13 years old or older: 4
    - Unable to Determine: 5

III. Removal/Placement Setting Indicators
- A. Removal Episodes
  - Date of First Removal From Home ___ (mo.) ___ (day) ___ (yr.)
  - Total Number of Removals From Home to Date _____
  - Date Child was Discharged From Last Foster Care Episode (If Applicable) ___ (mo.) ___ (day) ___ (yr.)
  - **Date of Latest Removal From Home ___ (mo.) ___ (day) ___ (yr.)

** Transaction Date ___ (mo.) ___ (day) ___ (yr.)
B. Placement Settings
Date of Placement in Current Foster Care Setting ___ (mo.) ___ (day) _____ (yr.)
Number of Previous Placement Settings During This Removal Episode _____
IV. Circumstances of Removal
A. Manner of Removal From Home for Current Placement Episode _____
Voluntary: 1
Court Ordered: 2
Not Yet Determined: 3
B. Actions or Conditions Associated With Child's Removal: (Indicate all that apply with a ''1'')
Physical Abuse (Alleged/Reported) _____
Sexual Abuse (Alleged/Reported) _____
Neglect (Alleged/Reported) _____
Alcohol Abuse (Parent) _____
Drug Abuse (Parent) _____
Alcohol Abuse (Child) _____
Drug Abuse (Child) _____
Child's Disability _____
Child's Behavior Problem _____
Death of Parent(s) _____
Incarceration of Parent(s) _____
Caretaker's Inability to Cope Due to Illness or Other Reasons _____
Abandonment _____
Relinquishment _____
Inadequate Housing _____
**V. Current Placement Setting _____
**A. Pre-Adoptive Home: 1
Foster Family Home (Relative): 2
Foster Family Home (Non-Relative): 3
Group Home: 4
Institution: 5
Supervised Independent Living: 6
Runaway: 7
Trial Home Visit: 8
**B. Is Current Placement Out-of-State? —
Yes (Out-of-State Placement): 1
No (In State Placement): 2
***VI. Most Recent Case Plan Goal _____
Reunify With Parent(s) or Principal Caretaker(s): 1
Live With Other Relative(s): 2
Adoption: 3
Long Term Foster Care: 4
Emancipation: 5
Guardianship: 6
Case Plan Goal Not Yet Established: 7
VII. Principal Caretaker(s) Information
A. Caretaker Family Structure _____
Married Couple: 1
Unmarried Couple: 2
Single Female: 3
Single Male: 4
Unable to Determine: 5
B. Year of Birth
1st Principal Caretaker _____
2nd Principal Caretaker (If Applicable) ____
VIII. Parental Rights Termination (If Applicable)
A. Mother ___ (mo.) ___ (day) ___ (yr.)
B. Legal or Putative Father ___ (mo.) ___ (day) ___ (yr.)
IX. Foster Family Home—Parent(s) Data (To be answered only if Section V., Part A. CURRENT PLACEMENT SETTING is 1, 2 or 3)
A. Foster Family Structure _____
Married Couple: 1
Unmarried Couple: 2
Single Female: 3
Single Male: 4
B. Year of Birth
1st Foster Caretaker _____
2nd Foster Caretaker (If Applicable) _____
C. Race/Origin
1. Race of 1st Foster Caretaker _____
White: 1
Black: 2
American Indian/Alaskan Native: 3
Asian/Pacific Islander: 4
Unable to Determine: 5
2. Hispanic Origin of 1st Foster Caretaker
Yes: 1
No: 2
Unable to Determine: 3
3. Race of 2nd Foster Caretaker (If Applicable) _____
White: 1
Black: 2
American Indian/Alaskan Native: 3
Asian/Pacific Islander: 4
Unable to Determine: 5
4. Hispanic Origin of 2nd Foster Caretaker (If applicable) _____
Yes: 1
No: 2
Unable to Determine: 3
X. Outcome Information
**A. Date of Discharge From Foster Care ___ (mo.) ___ (day) ___ (yr.)
**Transaction Date ___ (mo.) ___ (day) ___ (yr.)
**B. Reason for Discharge _____
Reunification With Parents or Primary Caretakers: 1
Living With Other Relative(s): 2
Adoption: 3
Emancipation: 4
Guardianship: 5
Transfer to Another Agency: 6
Runaway: 7
Death of Child: 8
XI. Source(s) of Federal Financial Support/Assistance for Child (Indicate all that apply with a ''1'')
Title IV–E (Foster Care) _____
Title IV–E (Adoption Assistance) _____
Title IV–A (Aid to Families with Dependent Children) _____
Title IV–D (Child Support) _____
Title XIX (Medicaid) _____
SSI or Other Social Security Act Benefits
None of the Above _____
XII. Amount of the monthly foster care payment (regardless of sources). _____.

Section II—Definitions of and Instructions for Foster Care Data Elements

Reporting population. The population to be included in this reporting system includes all children in foster care under the responsibility of the State agency administering or supervising the administration of the title IV–B child welfare services State plan and the title IV–E State plan; that is, all children who are required to be provided the protections of section 427 of the Social Security Act (SSA).

This population includes all children supervised by or under the responsibility of another public agency with which the title IV–B/IV–E State agency has an agreement under title IV–E and on whose behalf the State makes title IV–E foster care maintenance payments.

Foster care is defined as 24 hour substitute care for children outside their own homes. The reporting system includes all children who have or had been in foster care at least 24 hours. The foster care settings include, but are not limited to:

—Family foster homes
—Relative foster homes (whether payments are being made or not)
—Group homes
—Emergency shelters
—Residential facilities
—Child care institutions
—Pre-adoptive homes

Foster care does not include children who are in their own homes under the responsibility of the State agency. However, children who are at home on a trial basis may be included even though they are not considered to be in foster care. If they are included, element number V. CURRENT PLACEMENT SETTING must be given the value of ''8''.

I. General Information

A. State**—U.S. Postal Service two letter abbreviation for the State submitting the report.

B. Report Date**—The last month and the year for the reporting period.

C. Local Agency**—Identity of the county or equivalent unit which has responsibility for the case. The 5 digit Federal Information Processing Standard (FIPS) must be used.

D. Record Number**—The sequential number which the State uses to transmit data to the Department of Health and Human Services (DHHS) or a unique number which follows the child as long as he or she is in foster care. The record number cannot be linked to the child's case I.D. number except at the State or local level.

E. Date of Most Recent Periodic Review (If applicable)—For children who have been in care seven months or longer, enter the month, day and year of the most recent administrative or court review, including dispositional hearing. For children who have been in care less than seven months, leave the field blank. An entry in this field certifies that the child's computer record is current up to this date.

II. Child's Demographic Information

A. Date of Birth**—Month, day and year of the child's birth. If the child is abandoned or the date of birth is otherwise unknown, enter an approximate date of birth. Use the 15th as the day of birth.

B. Sex**—Indicate as appropriate.

C. Race/Origin**

1. Race—In general, a person's race is determined by how others define them or by how they define themselves. In the case of young children, parents determine the race of the child.

White—A person of European, North African, or Middle Eastern origin.

Black—A person whose ancestry is any of the black racial groups of Africa.

American Indian/Alaskan Native—A person whose ancestry is North American, and who maintains tribal affiliation or is so recognized in the community.

Asian/Pacific Islander—A person whose origin is the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands. This includes, for example, China, India, Japan, Korea, the Philippine Islands, Samoa and Vietnam.

Unable to Determine—The specific race category is ''unable to determine'' because the child is very young or is severely disabled and no person is available to identify the child's race.

2. Hispanic Origin—Answer ''yes'' if the child is a Mexican, Puerto Rican, Cuban, Central or South American person, or person of other Spanish cultural origin regardless of race. Whether or not a person is Hispanic is determined by how others define them or by how they define themselves. In the case of young children, parents determine the race of the child. ''Unable to Determine'' is used because the child is very young or is severely disabled and no person is available to determine whether or not the child is Hispanic. ''No'' is used when it is clear that the child is not Hispanic.

D. Has the child been clinically diagnosed as having a disability(ies)? ''Yes'' indicates that a qualified professional has clinically diagnosed the child as having at least one of the disabilities listed below. ''No'' indicates that a qualified professional has conducted a clinical assessment of the child and has determined that the child has no disabilities. ''Not Yet Determined'' indicates that a clinical assessment of the child by a qualified professional has not been conducted.

1. Indicate Each Type of Disability With a ''1''

Mental Retardation—Significantly subaverage general cognitive and motor functioning existing concurrently with deficits in

adaptive behavior manifested during the developmental period that adversely affect a child's/youth's socialization and learning.

Visually or Hearing Impaired—Having a visual impairment that may significantly affect educational performance or development; or a hearing impairment, whether permanent or fluctuating, that adversely affects educational performance.

Physically Disabled—A physical condition that adversely affects the child's day-to-day motor functioning, such as cerebral palsy, spina bifida, multiple sclerosis, orthopedic impairments, and other physical disabilities.

Emotionally Disturbed (DSM III)—A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree: An inability to build or maintain satisfactory interpersonal relationships; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal problems. The term includes persons who are schizophrenic or autistic. The term does not include persons who are socially maladjusted, unless it is determined that they are also seriously emotionally disturbed. The diagnosis is based on the Diagnostic and Statistical Manual of Mental Disorders (Third Edition) (DSM III) or the most recent edition.

Other Medically Diagnosed Conditions Requiring Special Care—Conditions other than those noted above which require special medical care such as chronic illnesses. Included are children diagnosed as HIV positive or with AIDS.

E. 1. Has this child ever been adopted? If this child has ever been legally adopted, enter ''yes.'' If the child has never been legally adopted, enter ''no''. Enter ''Unable to Determine'' if the child has been abandoned or the child's parent(s) are otherwise not available to provide the information.

2. If yes, how old was the child when the adoption was legalized? Enter the number which represents the appropriate age range. If uncertain, use an estimate. If no one is available to provide the information, enter ''Unable to Determine.''

III. Removal/Placement Setting Indicators

A. Removal Episodes—The removal of the child from his/her normal place of residence resulting in his/her placement in a foster care setting.

Date of First Removal From Home—Month, day and year the child was removed from home for the first time for purpose of placement in a foster care setting. If the current[1] removal is the first removal, enter the date of the current removal.

Total Number of Removals from Home to Date—The number of times the child was removed from home, including the current removal.

Date Child was Discharged From Last Foster Care Episode (If Applicable)—For children with prior removals, enter the month, day and year they were discharged from care for the episode immediately prior to the current episode. For children with no prior removals, leave blank.

Date of Latest Removal From Home**—Month, day and year the child was last removed from his/her home for the purpose of being placed in foster care. This would be the date for the current episode or, if the child has exited foster care, the date of removal for the most recent removal.

Transaction Date**—A computer generated date which accurately indicates the month, day and year the response to ''Date of Latest Removal From Home'' was entered into the information system.

B. Placement Settings.

Date of Placement in Current Foster Care Setting—Month, day and year the child moved into the current foster home, facility, residence, shelter, institution, etc. for purposes of continued foster care.

Number of Previous Placement Settings During This Removal Episode—Enter the number of places the child has lived, including the current setting, during the current removal episode. Do not include trial home visits as a placement setting.

IV. Circumstances of Removal

A. Manner of Removal From Home for Current Placement Episode.

Voluntary Placement Agreement—An official voluntary placement agreement has been executed between the caretaker and the agency. The placement remains voluntary even if a subsequent court order is issued to continue the child in foster care.

Court Ordered—The court has issued an order which is the basis of the child's removal.

Not Yet Determined—A voluntary placement agreement has not been signed or a court order has not been issued. This will mostly occur in very short-term cases. When either a voluntary placement agreement is signed or a court order issued, the record should be updated to reflect the manner of removal at that time.

B. Actions or Conditions Associated With Child's Removal (Indicate all that apply with a ''1''.)

[1] For children who have exited foster care, ''current'' refers to the most recent removal episode and the most recent placement setting.

Physical Abuse—Alleged or substantiated physical abuse, injury or maltreatment of the child by a person responsible for the child's welfare.

Sexual Abuse—Alleged or substantiated sexual abuse or exploitation of a child by a person who is responsible for the child's welfare.

Neglect—Alleged or substantiated negligent treatment or maltreatment, including failure to provide adequate food, clothing, shelter or care.

Alcohol Abuse (Parent)—Principal caretaker's compulsive use of alcohol that is not of a temporary nature.

Drug Abuse (Parent)—Principal caretaker's compulsive use of drugs that is not of a temporary nature.

Alcohol Abuse (Child)—Child's compulsive use of or need for alcohol. This element should include infants addicted at birth.

Drug Abuse (Child)—Child's compulsive use of or need for narcotics. This element should include infants addicted at birth.

Child's Disability—Clinical diagnosis by a qualified professional of one or more of the following: Mental retardation; emotional disturbance; specific learning disability; hearing, speech or sight impairment; physical disability; or other clinically diagnosed handicap. Include only if the disability(ies) was at least one of the factors which led to the child's removal.

Child's Behavior Problem—Behavior in the school and/or community that adversely affects socialization, learning, growth, and moral development. These may include adjudicated or nonadjudicated child behavior problems. This would include the child's running away from home or other placement.

Death of Parent(s)—Family stress or inability to care for child due to death of a parent or caretaker.

Incarceration of Parent(s)—Temporary or permanent placement of a parent or caretaker in jail that adversely affects care for the child.

Caretaker's Inability to Cope Due to Illness or Other Reasons—Physical or emotional illness or disabling condition adversely affecting the caretaker's ability to care for the child.

Abandonment—Child left alone or with others; caretaker did not return or make whereabouts known.

Relinquishment—Parent(s), in writing, assigned the physical and legal custody of the child to the agency for the purpose of having the child adopted.

Inadequate Housing—Housing facilities were substandard, overcrowded, unsafe or otherwise inadequate resulting in their not being appropriate for the parents and child to reside together. Also includes homelessness.

V. Current Placement Setting**

A. Identify the type of setting in which the child currently lives.

Pre-Adoptive Home—A home in which the family intends to adopt the child. The family may or may not be receiving a foster care payment or an adoption subsidy on behalf of the child.

Foster Family Home (Relative)—A licensed or unlicensed home of the child's relatives regarded by the State as a foster care living arrangement for the child.

Foster Family Home (Non-Relative)—A licensed foster family home regarded by the State as a foster care living arrangement.

Group Home—A licensed or approved home providing 24-hour care for children in a small group setting that generally has from seven to twelve children.

Institution—A child care facility operated by a public or private agency and providing 24-hour care and/or treatment for children who require separation from their own homes and group living experience. These facilities may include: Child care institutions; residential treatment facilities; maternity homes; etc.

Supervised Independent Living—An alternative transitional living arrangement where the child is under the supervision of the agency but without 24 hour adult supervision, is receiving financial support from the child welfare agency, and is in a setting which provides the opportunity for increased responsibility for self care.

Runaway—The child has run away from the foster care setting.

Trial Home Visit—The child has been in a foster care placement, but, under State agency supervision, has been returned to the principal caretaker for a limited and specified period of time.

B. Is current placement setting out of State?

''Yes'' indicates that the current placement setting is located outside of the state making the report.

''No'' indicates that the child continues to reside within the state making the report.

NOTE: Only the state with placement and care responsibility for the child should include the child in this reporting system.

VI. Most Recent Case Plan Goal***

Indicate the most recent case plan goal for the child based on the latest review of the child's case plan—whether a court review or an administrative review. If the child has been in care less than six months, enter the goal in the case record as determined by the caseworker.

Reunify With Parents or Principal Caretaker(s)—The goal is to keep the child in foster care for a limited time to enable the agency to work with the family with whom the child had been living prior to entering

foster care in order to reestablish a stable family environment.

Live With Other Relatives—The goal is to have the child live permanently with a relative or relatives other than the ones from whom the child was removed. This could include guardianship by a relative(s).

Adoption—The goal is to facilitate the child's adoption by relatives, foster parents or other unrelated individuals.

Long Term Foster Care—Because of specific factors or conditions, it is not appropriate or possible to return the child home or place her or him for adoption, and the goal is to maintain the child in a long term foster care placement.

Emancipation—Because of specific factors or conditions, it is not appropriate or possible to return the child home, have a child live permanently with a relative or have the child be adopted; therefore, the goal is to maintain the child in a foster care setting until the child reaches the age of majority.

Guardianship—The goal is to facilitate the child's placement with an agency or unrelated caretaker, with whom he or she was not living prior to entering foster care, and whom a court of competent jurisdiction has designated as legal guardian.

Case Plan Goal Not Yet Established—No case plan goal has yet been established other then the care and protection of the child.

VII. Principal Caretaker(s) Information

A. Caretaker Family Structure—Select from the four alternatives—married couple, unmarried couple, single female, single male—the category which best describes the type of adult caretaker(s) from whom the child was removed for the current foster care episode. Enter ''Unable to Determine'' if the child has been abandoned or the child's caretakers are otherwise unknown.

B. Year of Birth—Enter the year of birth for up to two caretakers. If the response to data element VII. A—Caretaker Family Structure, was 1 or 2, enter data for two caretakers. If the response was 3 or 4, enter data only for the first caretaker. If the exact year of birth is unknown, enter an estimated year of birth.

VIII. Parental Rights Termination

Enter the month, day and year that the court terminated the parental rights. If the parents are known to be deceased, enter the date of death.

IX. Family Foster Home—Parent(s) Data

Provide information only if data element in Section V., Part A. CURRENT PLACEMENT SETTING is 1, 2, or 3.

A. Foster Family Structure—Select from the four alternatives—married couple, unmarried couple, single female, single male—the category which best describes the nature of the foster parents with whom the child is living in the current foster care episode.

B. Year of Birth—Enter the year of birth for up to two foster parents. If the response to data element IX. A.—Foster Family Structure, was 1 or 2, enter data for two caretakers. If the response was 3 or 4, enter data only for the first caretaker. If the exact year of birth is unknown, enter an estimated year of birth.

C. Race—See instructions and definitions under data element II.C. Indicate the race/origin for each of the foster parent(s).

D. Hispanic Origin—See instructions and definitions under data element II.D. Indicate the race/origin for each of the foster parent(s).

X. Outcome Information

Enter data only for children who have exited foster care during the reporting period.

A. Date of Discharge From Foster Care**—Enter the month, day and year the child was discharged from foster care. If the child has not been discharged from care, leave blank.

Transaction Date**—A computer generated date which accurately indicates the month, day and year the response to ''Date of Discharge from Foster Care'' was entered into the information system.

B. Reason for Discharge**.

Reunification With Parents or Primary Caretakers—The child was returned to his or her principal caretaker(s)' home.

Living With Other Relatives—The child went to live with a relative other than the one from whose home he or she was removed.

Adoption—The child was legally adopted.

Emancipation—The child reached majority according to State law by virtue of age, marriage, etc.

Guardianship—Permanent custody of the child was awarded to an individual.

Transfer to Another Agency—Responsibility for the care of the child was awarded to another agency—either in or outside of the State.

Runaway—The child ran away from the foster care placement.

Death of Child—The child died while in foster care.

XI. Source(s) of Federal Support/Assistance for Child (Indicate all That Apply With a ''1''.)

Title IV–E (Foster Care)—Title IV–E foster care maintenance payments are being paid on behalf of the child.

Title IV–E (Adoption Subsidy)—Title IV–E adoption subsidy is being paid on behalf of the child who is in an adoptive home, but the adoption has not been legalized.

Title IV–A (Aid to Families With Dependent Children)—Child is living with relative(s)

whose source of support is an AFDC payment for the child.

Title IV–D (Child Support)—Child support funds are being paid to the State agency on behalf of the child by assignment from the receiving parent.

Title XIX (Medicaid)—Child is eligible for and may be receiving assistance under title XIX.

SSI or Other Social Security Act Benefits—Child is receiving support under title XVI or other Social Security Act titles not included in this section.

None of the Above—Child is receiving support only from the State or from some other source (Federal or non-Federal) which is not indicated above.

XII. Amount of the monthly foster care payment (regardless of sources)—Enter the monthly payment paid on behalf of the child regardless of source (i.e., Federal, State, county, municipality, tribal, and private payments). If title IV–E is paid on behalf of the child the amount indicated should be the total computable amount. If the payment made on behalf of the child is not the same each month, indicate the amount of the last full monthly payment made during the reporting period. If no monthly payment has been made during the period, enter all zeros.

[58 FR 67926, Dec. 22, 1993; 59 FR 13535, Mar. 22, 1994; 59 FR 42520, Aug. 18, 1994; 60 FR 40507, Aug. 9, 1995; 60 FR 46887, Sept. 8, 1995]

APPENDIX B TO PART 1355—ADOPTION DATA ELEMENTS

Section I—Adoption Data Elements

I. General Information
- A. State _____
- B. Report Date ___(mo.) ___(day) ___(yr.)
- C. Record Number _____
- D. Did the State Agency Have any Involvement in This Adoption? _____
- Yes: 1
- No: 2

II. Child's Demographic Information
- A. Date of Birth ___(mo) ___(day) ___(yr.)
- B. Sex ___
- Male: 1
- Female: 2
- C. Race/Origin
- 1. Race _____
- White: 1
- Black: 2
- American Indian/Alaskan Native: 3
- Asian/Pacific Islander: 4
- Unable to Determine: 5
- 2. Hispanic Origin _____
- Yes: 1
- No: 2
- Unable to determine: 3

III. Special Needs Status
- A. Has the State child welfare agency determined that this child has special needs? _____
- Yes: 1
- No: 2
- B. If yes, indicate the primary basis for determining that this child has special needs _____
- Racial/Original Background: 1
- Age: 2
- Membership in a Sibling Group to be Placed for Adoption Together: 3
- Medical Conditions or Mental, Physical or Emotional Disabilities: 4
- Other: 5
- 1. If III. B was ''4,'' indicate with a ''1'' the type(s) of disability(ies)
- Mental Retardation _____
- Visually or Hearing Impaired _____
- Physically Disabled _____
- Emotionally Disturbed (DSM III) _____
- Other Medically Diagnosed Condition Requiring Special Care _____

IV. Birth Parents
- A. Year of Birth _____
- Mother, If known _____
- Father (Putative or Legal), if known _____
- B. Was the mother married at the time of the child's birth? _____
- Yes: 1
- No: 2
- Unable to Determine: 3

V. Court Actions
- A. Dates of Termination of Parental Rights
- Mother ___(mo.) ___(day) ___(yr.)
- Father ___(mo.) ___(day) ___(yr.)
- B. Date Adoption Legalized ___(mo.) ___(day) ___(yr.)

VI. Adoptive Parents
- A. Family Structure _____
- Married Couple: 1
- Unmarried Couple: 2
- Single Female: 3
- Single Male: 4
- B. Year of Birth
- Mother (if Applicable) _____
- Father (if Applicable) _____
- C. Race/Origin
- 1. Adoptive Mother's Race (If Applicable)
- White: 1
- Black: 2
- American Indian/Alaskan Native: 3
- Asian/Pacific Islander: 4
- Unable to Determine: 5
- 2. Hispanic Origin of Mother (If Applicable) _____
- Yes: 1
- No: 2
- Unable to Determine: 3
- 3. Adoptive Father's Race (If Applicable)
- White: 1
- Black: 2
- American Indian/Alaskan Native: 3
- Asian/Pacific Islander: 4
- Unable to Determine: 5

4. Hispanic Origin of Father (If Applicable) _____
Yes: 1
No: 2
Unable to Determine: 3
D. Relationship of Adoptive Parent(s) to the Child (Indicate with a ''1'' all that apply)
Stepparent
Other Relative of Child by Birth or Marriage _____
Foster Parent of Child _____
Non-Relative _____
VII. Placement Information
A. Child Was Placed From _____
Within State: 1
Another State: 2
Another Country: 3
B. Child Was Placed by _____
Public Agency: 1
Private Agency: 2
Tribal Agency: 3
Independent Person: 4
Birth Parent: 5
VIII. Federal/State Financial Adoption Support
A. Is a monthly financial subsidy being paid for this child? _____
Yes: 1
No: 2
B. If yes, the monthly amount _____
C. If VIII. A is yes, is the subsidy paid under Title IV–E adoption assistance? _____
Yes: 1
No: 2

Section II—Definitions of Instructions for Adoption Data Elements

Reporting population

The State must report on all children who are adopted in the State during the reporting period and in whose adoption the State title IV–B/IV–E agency has had any involvement. All adoptions which occurred on or after October 1, 1994 and which meet the criteria set forth in this regulation must be reported. Failure to report on these adoptions will result in penalties being assessed. Reports on all other adoptions are encouraged but are voluntary. Therefore, reports on the following are mandated:

(a) All children adopted who had been in foster care under the responsibility and care of the State child welfare agency and who were subsequently adopted whether special needs or not and whether subsidies are provided or not;

(b) All special needs children who were adopted in the State, whether or not they were in the public foster care system prior to their adoption and for whom non-recurring expenses were reimbursed; and

(c) All children adopted for whom an adoption assistance payment or service is being provided based on arrangements made by or through the State agency.

These children must be identified by answering ''yes'' to data element I.D. Children who are reported by the State, but for whom there has not been any State involvement, and whose reporting, therefore, has not been mandated, are identified by answering ''no'' to element I.D.

I. General Information

A. State—U.S. Postal Service two letter abbreviation for the State submitting the report.

B. Report Date—The last month and the year for the reporting period.

C. Record Number—The sequential number which the State uses to transmit data to the Department of Health and Human Services (DHHS). The record number cannot be linked to the child except at the State or local level.

D. Did the State Agency Have Any Involvement in This Adoption?

Indicate whether the State Title IV–B/IV–E agency had any involvement in this adoption, that is, whether the adopted child belongs to one of the following categories:

- A child who had been in foster care under the responsibility and care of the State child welfare agency and who was subsequently adopted whether special needs or not and whether a subsidy was provided or not;
- A special needs child who was adopted in the State, whether or not he/she was in the public foster care system prior to his/her adoption and for whom non-recurring expenses were reimbursed; or
- A child for whom an adoption assistance payment or service is being provided based on arrangements made by or through the State agency.

II. Child's Demographic Information

A. Date of Birth—Month and year of the child's birth. If the child was abandoned or the date of birth is otherwise unknown, enter an approximate date of birth.

B. Sex—Indicate as appropriate.

C. Race/Origin.

1. Race—In general, a person's race is determined by how others define them or by how they define themselves. In the case of young children, parents determine the race of the child.

White—A person of European, North African, or Middle Eastern origin.

Black—A person whose ancestry is any of the black racial groups of Africa.

American Indian/Alaskan Native—A person whose ancestry is North American, and who maintains tribal affiliation or is so recognized in the community.

Asian/Pacific Islander—A person whose origin is the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands.

This includes for example, China, India, Japan, Korea, the Philippine Islands, Samoa and Vietnam.

Unable to Determine—The specific race category is ''Unable to Determine'' because the child is very young or is severely disabled and no other person is available to identify the child's race.

2. Hispanic Origin—Answer ''yes'' if the child is a Mexican, Puerto Rican, Cuban, Central or South American person, or person of other Spanish cultural origin regardless of race. Whether or not a person is Hispanic is determined by how others define them or by how they define themselves. In the case of young children, parents determine the race of the child. ''Unable to Determine'' is used because the child is very young or is severely disabled and no other person is available to determine whether or not the child is Hispanic.

III. Special Needs Status

A. Has the State Agency Determined That the Child has Special Needs?

Use the State definition of special needs as it pertains to a child eligible for an adoption subsidy under title IV–E.

B. Primary Factor or Condition for Special Needs—Indicate only the primary factor or condition for categorization as special needs and only as it is defined by the State.

Racial/Original Background—Primary condition or factor for special needs is racial/original background as defined by the State.

Age—Primary factor or condition for special needs is age of the child as defined by the State.

Membership in a Sibling Group to be Placed for Adoption Together—Primary factor or condition for special needs is membership in a sibling group as defined by the State.

Medical Conditions of Mental, Physical, or Emotional Disabilities—Primary factor or condition for special needs is the child's medical condition as defined by the State, but clinically diagnosed by a qualified professional.

When this is the response to question B, then item 1 below must be answered.

1. Types of Disabilities—Data are only to be entered if response to III.B was ''4.'' Indicate with a ''1'' the types of disabilities.

Mental Retardation—Significantly subaverage general cognitive and motor functioning existing concurrently with deficits in adaptive behavior manifested during the developmental period that adversely affect a child's/youth's socialization and learning.

Visually or Hearing Impaired—Having a visual impairment that may significantly affect educational performance or development; or a hearing impairment, whether permanent or fluctuating, that adversely affects educational performance.

Physically Disabled—A physical condition that adversely affects the child's day-to-day motor functioning, such as cerebral palsy, spina bifida, multiple sclerosis, orthopedic impairments, and other physical disabilities.

Emotionally Disturbed (DSM III)—A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree: An inability to build or maintain satisfactory interpersonal relationships; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal problems. The term includes persons who are schizophrenic or autistic. The term does not include persons who are socially maladjusted, unless it is determined that they are also seriously emotionally disturbed. Diagnosis is based on the *Diagnostic and Statistical Manual of Mental Disorders (Third Edition)* (DSM III) or the most recent edition.

Other Medically Diagnosed Conditions Requiring Special Care—Conditions other than those noted above which require special medical care such as chronic illnesses. Included are children diagnosed as HIV positive or with AIDS.

IV. Birth Parents

A. Year of Birth—Enter the year of birth for both parents, if known. If the child was abandoned and no information was available on either one or both parents, leave blank for the parent(s) for which no information was available.

B. Was the Mother Married at the Time of the Child's Birth?

Indicate whether the mother was married at time of the child's birth; include common law marriage if legal in the State. If the child was abandoned and no information was available on the mother, enter ''Unable to Determine.''

V. Court Actions

A. Dates of Termination of Parental Rights—Enter the month, day and year that the court terminated parental rights. If the parents are known to be deceased, enter the date of death.

B. Date Adoption Legalized—Enter the date the court issued the final adoption decree.

VI. Adoptive Parents

A. Family Structure—Select from the four alternatives—married couple, unmarried couple, single female, single male—the category which best describes the nature of the adoptive parent(s) family structure.

B. Year of Birth—Enter the year of birth for up to two adoptive parents. If the response to data element IV.A—Family Structure, was 1 or 2, enter data for two parents.

If the response was 3 or 4, enter data only for the appropriate parent. If the exact year of birth is unknown, enter an estimated year of birth.

C. Race/Origin—See instructions and definitions under data element II.C. Indicate the race/origin for each of the adoptive parent(s).

D. Relationship to Adoptive Parent(s)—Indicate the prior relationship(s) the child had with the adoptive parent(s).

Stepparent—Spouse of the child's birth mother or birth father.

Other Relative of Child by Birth or Marriage—A relative through the birth parents by blood or marriage.

Foster Parent of Child—Child was placed in a non-relative foster family home with a family which later adopted him or her. The initial placement could have been for the purpose of adoption or for the purpose of foster care.

Non-Relative—Adoptive parent fits into none of the categories above.

VII. Placement Information

A. Child Was Placed From: Indicate the location of the individual or agency that had custody or responsibility for the child at the time of initiation of adoption proceedings.

Within State—Responsibility for the child resided with an individual or agency within the State filing the report.

Another State—Responsibility for the child resided with an individual or agency in another State or territory of the United States.

Another Country—Immediately prior to the adoptive placement, the child was residing in another country and was not a citizen of the United States.

B. Child Was Placed By: Indicate the individual or agency which placed the child for adoption.

Public Agency—A unit of State or local government.

Private Agency—A for-profit or non-profit agency or institution.

Tribal Agency—A unit within one of the Federally recognized Indian Tribes or Indian Tribal Organizations.

Independent Person—A doctor, a lawyer or some other individual.

Birth Parent—The parent(s) placed the child directly with the Adoptive parent(s).

VIII. State/Federal Adoption Support

A. Is The Child Receiving a Monthly Subsidy?

Enter ''yes'' if this child was adopted with an adoption assistance agreement under which regular subsidies (Federal or State) are paid.

B. Monthly Amount—Indicate the monthly amount of the subsidy. The amount of the subsidy should be rounded to the nearest dollar. Indicate ''0'' if the subsidy includes only benefits under titles XIX or XX of the Social Security Act.

C. If VIII.A is ''Yes,'' is Child Receiving Title IV–E Adoption Subsidy?

If VIII.A is ''yes,'' indicate whether the subsidy is claimed by the State for reimbursement under title IV–E. Do not include title IV–E non-recurring costs in this item.

[58 FR 67929, Dec. 22, 1993; 59 FR 42520, Aug. 18, 1994]

APPENDIX C TO PART 1355—ELECTRONIC DATA TRANSMISSION FORMAT

All AFCARS data to be sent from State agencies/Indian Tribes to the Department are to be in electronic form. In order to meet this general specification, the Department will offer as much flexibility as possible. Technical assistance will be provided to negotiate a method of transmission best suited to the States' environment.

There will be four semi-annual electronic data transmissions from the States to the Administration for Children and Families (ACF). The Summary Submission File, one each for Foster Care and Adoption, and the Detail Submission File, one each for Foster Care and Adoption. The Summary File must be transmitted first, followed immediately by the Detail File. See appendix D for Foster Care and Adoption Detail and Summary record layout formats.

There are four methods for electronic data exchange currently operating for other Departmental programs of a similar nature. These methods are: (1) MITRON tape-to-tape transfer, (2) mainframe-to-mainframe data transfer, (3) personal computer (PC) to mainframe data transmission using a data transfer protocol, and (4) a personal computer to personal computer protocol. A general description of these methods is provided below:

1. MITRON, Tape-to-Tape Data Transmission

In order to use the MITRON system, both the sender and receiver must have MITRON equipment (tape drive and main unit) and software. The MITRON system is capable of handling a large volume of data but is limited to one reel of tape per transmission session. (If the data quantity exceeds one tape, a header/trailer record must be placed on each physical tape reel.) These are standard 2400 foot tapes, using standard labels. The tape density is limited to the 1600 bits per inch (bpi) specification.

2. Mainframe-to-Mainframe

The ACF has installed a mainframe-to-mainframe data exchange system using the Sterling Software data transfer package called ''SUPERTRACS.'' This package will allow data exchange between most computer platforms (both mini and mainframe) and the Department's mainframe in a dial-up mode. No additional software is needed by

the remote computer site beyond what the Department will supply. This method has proven effective for small to moderate amounts (100 to 5,000 records) of data.

3. Electronic File Transfer Between PC and Mainframe

This method uses the SIMPC software package on the personal computer and the host mainframe. The software will be provided by the Department. This method is best suited for small to moderate (100 to 5,000) records transmissions. The advantages of Electronic File Transfer are the elimination of tapes and associated problems and the advantage of automatic record checking during the transmission session. If a State is currently maintaining the AFCARS data on a personal computer and is unable to download and upload to its mainframe, Electronic File Transfer is an appropriate transmission mechanism.

4. Personal Computer to Personal Computer

This method uses the SIMPC software package on the sending personal computer and the receiving personal computer. The software will be provided by the Department. This method is best suited for small to moderate (100 to 5,000) records transmissions. The advantages of Electronic File Transfer are the elimination of tapes and associated problems and the advantage of automatic record checking during the transmission session. If a State is currently maintaining the AFCARS data on a personal computer, the personal computer to personal computer transfer is an appropriate transmission mechanism.

In conjunction with Departmental staff, State agencies and Indian Tribes should review their resources and select the system that will best suit their data transmission needs. Over time, State agencies and Indian Tribes can change their transmission methods, provided that proper notification is provided.

Regardless of the electronic data transmission methodology selected, certain criteria must be met by the State agencies and Indian Tribes:

(1) Records must be written using ASCII standard character format.

(2) All elements must be comprised of integer (numeric) value(s). Element character length specifications refer to the maximum number of numeric values permitted for that element. See appendix D.

(3) All records must be a fixed length. The Foster Care Detailed Data Elements Record is 150 characters long and the Adoption Detailed Data Elements Record is 72 characters long. The Foster Care Summary Data Elements Record and the Adoption Summary Data Elements Record are each 172 characters long.

(4) All States and Indian Tribes must inform the Department, in writing, of the method of transfer they intend to use.

[58 FR 67931, Dec. 22, 1993; 59 FR 42520, Aug. 18, 1994, as amended at 60 FR 40507, Aug. 9, 1995]

APPENDIX D TO PART 1355—FOSTER CARE AND ADOPTION RECORD LAYOUTS

A. Foster Care

1. Foster Care Semi-Annual Detailed Data Elements Record

a. The record will consist of 66 data elements.

b. Data must be supplied for each of the elements in accordance with these instructions:

(1) All data must be numeric. Enter the appropriate value for each element.

(2) Enter date values in year, month and day order (YYMMDD), e.g., 890122 for January 22, 1989 or year and month (YYMM) order, e.g., 8901 for January 1989. If dates are not applicable, leave the element value blank.

(3) For elements 11–15, 26–40, and 59–65, which are ''select all that apply'' elements, enter a ''1'' for each element that applies, enter a zero for non-applicable elements.

(4) Transaction Date—is a computer generated date indicating when the datum (Elements 21 or 55) is entered into the State's automated information system.

(5) Report the status of all children in foster care as of the last day of the reporting period. Also, provide data for all children who were discharged from foster care at any time during the reporting period, or in the previous reporting period, if not previously reported.

c. Foster Care Semi-Annual Detailed Data Elements Record Layout follows:

Element No.	Appendix A data element	Data element description	No. of numeric characters
01	I.A.	State	2
02	I.B.	Report period ending date	4
03	I.C.	Local Agency FIPS code (county or equivalent jurisdiction)	5
04	I.D.	Record number	12
05	I.E.	Date of most recent periodic review (if applicable)	6
06	II.A.	Date of birth	6
07	II.B.	Sex	1

Element No.	Appendix A data element	Data element description	No. of numeric characters
08	II.C.1.	Race	1
09	II.C.2.	Hispanic origin	1
10	II.D.	Has this child been clinically diagnosed as having a disability(ies) **Indicate each type of disability of the child with a ''1'' for elements 11–15 and a zero for disabilities that do not apply**.	1
11	II.D.1.a.	Mental retardation	1
12	II.D.1.b.	Visually or hearing impaired	1
13	II.D.1.c.	Physically disabled	1
14	II.D.1.d.	Emotionally disturbed (DSM III)	1
15	II.D.1.e	Other medically diagnosed condition requiring special care	1
16	II.E.1.	Has this child ever been adopted	1
17	II.E.2.	If yes, how old was the child when the adoption was legalized?	1
18	III.A.1.	Date of first removal from home	6
19	III.A.2.	Total number of removals from home to date	2
20	III.A.3.	Date child was discharged from last foster care episode (if applicable).	6
21	III.A.4.	Date of latest removal from home	6
22	III.A.5.	Removal transaction date	6
23	III.B.1.	Date of placement in current foster care setting	6
24	III.B.2.	Number of previous placement settings during this removal episode.	2
25	IV.A.	Manner of removal from home for current placement episode **Actions or conditions associated with child's removal: Indicate with a ''1'' for elements 26–40 and a zero for conditions that do not apply**.	1
26	IV.B.1.	Physical abuse (alleged/reported)	1
27	IV.B.2.	Sexual abuse (alleged/reported)	1
28	IV.B.3.	Neglect (alleged/reported)	1
29	IV.B.4.	Alcohol abuse (parent)	1
30	IV.B.5.	Drug abuse (parent)	1
31	IV.B.6.	Alcohol abuse (child)	1
32	IV.B.7.	Drug abuse (child)	1
33	IV.B.8.	Child's disability	1
34	IV.B.9.	Child's behavior problem	1
35	IV.B.10.	Death of parent(s)	1
36	IV.B.11.	Incarceration of parent(s)	1
37	IV.B.12.	Caretaker's inability to cope due to illness or other reasons	1
38	IV.B.13.	Abandonment	1
39	IV.B.14.	Relinquishment	1
40	IV.B.15.	Inadequate housing	1
41	V.A.	Current placement setting	1
42	V.B.	Out of State placement	1
43	VI.	Most recent case plan goal	1
44	VII.A.	Caretaker family structure	1
45	VII.B.1.	Year of birth (1st principal caretaker)	2
46	VII.B.2.	Year of birth (2nd principal caretaker—if applicable)	2
47	VIII.A.	Date of mother's parental rights termination (if applicable)	6
48	VIII.B.	Date of legal or putative father's parental rights termination (if applicable).	6
49	IX.A.	Foster family structure	1
50	IX.B.1.	Year of birth (1st foster caretaker)	2
51	IX.B.2.	Year of birth (2nd foster caretaker—if applicable)	2
52	IX.C.1.	Race of 1st foster caretaker	1
53	IX.C.2.	Hispanic origin of 1st foster caretaker	1
54	IX.C.3.	Race of 2nd foster caretaker (if applicable)	1
55	IX.C.4.	Hispanic origin of 2nd foster caretaker (if applicable)	1
56	X.A.1.	Date of discharge from foster care	6
57	X.A.2.	Foster care discharge transaction date	6
58	X.B.	Reason for discharge **Sources of Federal support/assistance for child; indicate with a ''1'' for elements 58–64 and a zero for sources that do not apply**.	1
59	XI.A.	Title IV–E (Foster Care)	1
60	XI.B.	Title IV–E (Adoption Assistance)	1
61	XI.C.	Title IV–A (Aid to Families With Dependent Children)	1
62	XI.D.	Title IV–D (Child Support)	1
63	XI.E.	Title XIX (Medicaid)	1
64	XI.F.	SSI or other Social Security Act benefits	1
65	XI.G.	None of the above	1
66	XII	Amount of monthly foster care payment (regardless of source)	5
		Total characters	150

2. Foster Care Semi-Annual Summary Data Elements Record

a. The record will consist of 22 data elements.

The values for these data elements are generated by processing all records in the semi-annual detailed data transmission and computing the summary values for Elements 1 and 3–22. Element 2 is the semi-annual report period ending date. In calculating the age range for the child, the last day of the reporting period is to be used.

b. Data must be supplied for each of the elements in accordance with these instructions:

(1) Enter the appropriate value for each element.

(2) For all elements where the total is zero, enter a numeric zero.

(3) Enter date values in year, month order (YYMM), e.g., 9112 for December 1991.

c. Foster Care Semi-Annual Summary Data Elements Record Layout follows:

Element No.	Summary data file	No. of characters
01	Number of records	8
02	Report period ending date (YYMM)	4
03	Children in care under 1 year	8
04	Children in care 1 year old	8
05	Children in care 2 years old	8
06	Children in care 3 years old	8
07	Children in care 4 years old	8
08	Children in care 5 years old	8
09	Children in care 6 years old	8
10	Children in care 7 years old	8
11	Children in care 8 years old	8
12	Children in care 9 years old	8
13	Children in care 10 years old	8
14	Children in care 11 years old	8
15	Children in care 12 years old	8
16	Children in care 13 years old	8
17	Children in care 14 years old	8
18	Children in care 15 years old	8
19	Children in care 16 years old	8
20	Children in care 17 years old	8
21	Children in care 18 years old	8
22	Children in care over 18 years old	8
	Record Length	172

B. Adoption

1. Adoption Semi-Annual Detailed Data Elements Record

a. The record will consist of 37 data elements.

b. Data must be supplied for each of the elements in accordance with these instructions:

(1) Enter the appropriate value for each element.

(2) Enter date values in year, month and day order (YYMMDD), e.g., 890122 for January 22, 1989 or year and month (YYMM) order, e.g., 8901 for January 1989. If dates are not applicable, leave the element value blank.

(3) For elements 11–15 and 29–32 which are ''select all that apply'' elements, enter a ''1'' for each element that applies; enter a zero for non-applicable elements.

c. Adoption Semi-Annual Detailed Data Elements Record Layout follows:

Element No.	Appendix B data element	Data element description	No. of numeric characters
01	I.A.	State	2
02	I.B.	Report period ending date	4
03	I.C.	Record number	6
04	I.D.	State Agency involvement	1
05	II.A.	Date of birth	4
06	II.B.	Sex	1
07	II.C.1.	Race	1
08	II.C.2.	Hispanic origin	1
09	III.A	Has the State Agency determined that this child has special needs	1
10	III.B	Primary basis for special needs **Indicate a primary basis of special needs with a ''1'' for elements 11–15. Enter a zero for special needs that do not apply**.	1
11	III.B.1.a	Mental retardation	1
12	III.B.1.b.	Visually or hearing impaired	1
13	III.B.1.c	Physically disabled	1

Element No.	Appendix B data element	Data element description	No. of numeric characters
14	III.B.1.d	Emotionally disturbed (DSM III)	1
15	III.B.1.e.	Other medically diagnosed condition requiring special care	1
16	IV.A.1.	Mother's year of birth	2
17	IV.A.2.	Father's (Putative or legal) year of birth	2
18	IV.B.	Was the mother married at time of child's birth	1
19	V.A.1.	Date of mother's termination of parental rights	6
20	V.A.2.	Date of father's termination of parental rights	6
21	V.B.	Date adoption legalized	6
22	VI.A.	Adoptive parents family structure	1
23	VI.B.1	Mother's year of birth (if applicable)	2
24	VI.B.2	Father's year of birth (if applicable)	2
25	VI.C.1.	Adoptive mother's race (if applicable)	1
26	VI.C.2	Hispanic origin mother (if applicable)	1
27	VI.C.3	Adoptive father's race (if applicable)	1
28	VI.C.4	Hispanic origin father (if applicable)	1
		Indicate each type of relationship of adoptive parent(s) to the child with a ''1'' for elements 29–32. Enter a zero for relationships that do not apply below.	
29	VI.D.1	Stepparent	1
30	VI.D.2.	Other relative of child by birth or marriage	1
31	VI.D.3	Foster parent of child	1
32	VI.D.4	Other non-relative	1
33	VII.A.	Child was placed from	1
34	VII.B.	Child was placed by	1
35	VIII.A.	Is this child receiving a monthly subsidy	1
36	VIII.B.	If VIII.B is ''yes.'' What is the monthly amount	5
37	VIII.C	If VII.B is ''yes.'' Is the child receiving title IV–E adoption assistance?.	1
		Total Characters	72

2. Adoption Semi-Annual Summary Data Elements Record

a. The record will consist of 22 data elements.

The values for these data elements are generated by processing all records in the semi-annual detailed data transmission and computing the summary values for Elements 1 and 3–22. Element 2 is the semi-annual report period ending date. In calculating the age range for the child, the last day of the reporting period is to be used.

b. Data must be supplied for each of the elements in accordance with these instructions:

(1) Enter the appropriate value for each element.

(2) For all elements where the total is zero, enter a numeric zero.

(3) Enter data values in year, month order (YYMM), e.g., 9112 for December 1991.0

c. Adoption Semi-Annual Summary Data Elements Record Layout follows:

Element No.	Summary data file	No. of characters
01	Number of records	8
02	Report period ending date (YYMM)	4
03	Children adopted Under 1 year old	8
04	Children adopted 1 year old	8
05	Children adopted 2 years old	8
06	Children adopted 3 years old	8
07	Children adopted 4 years old	8
08	Children adopted 5 years old	8
09	Children adopted 6 years old	8
10	Children adopted 7 years old	8
11	Children adopted 8 years old	8
12	Children adopted 9 years old	8
13	Children adopted 10 years old	8
14	Children adopted 11 years old	8
15	Children adopted 12 years old	8
16	Children adopted 13 years old	8
17	Children adopted 14 years old	8
18	Children adopted 15 years old	8
19	Children adopted 16 years old	8
20	Children adopted 17 years old	8
21	Children adopted 18 years old	8
22	Children adopted over 18 years old	8
	Record Length	172

[58 FR 67931, Dec. 22, 1993; 59 FR 13535, Mar. 22, 1994; 59 FR 42520, Aug. 18, 1994, as amended at 60 FR 40507, Aug. 9, 1995]

APPENDIX E TO PART 1355—DATA STANDARDS

All data submissions will be evaluated to determine the completeness and internal consistency of the data. Four types of assessments will be conducted on both the foster care and adoption data submissions. The results of these assessments will determine the applicability of the penalty provisions. (See §1355.40(e) for penalty provision description.) The four types of assessments are:

- Comparisons of the detailed data to summary data;
- Internal consistency checks of the detailed data;
- An assessment of the status of missing data; and
- Timeliness, an assessment of how current the submitted data are.

A. Foster Care

1. Summary Data Elements Submission Standards

A summary file must accompany the Detailed Data Elements submission. Both transmissions must be sent through electronic means (see appendix C for details). This summary will be used to verify basic counts of records on the detailed data received.

a. The summary file must be a discrete file separate from the semi-annual reporting period detailed data file. The record layout for the summary file is included in appendix D. section A.2.c. All data must be included. If the value for a numeric field is zero, zero must be entered.

b. The Department will develop a second summary file by computing the values from the detailed data file received from the State. The two summary files (the one submitted by the State and the one created during Federal processing) will be compared, field by field. If the two files match, further validation of the detailed data elements will commence. (See Section A.2 below.) If the two summary files do not match, we will assume that there has been an error in transmission and will request a retransmission from the State within 24 hours of the time the State has been notified. In addition, a log of these occurrences will be kept as a means of cataloging problems and offering suggestions on improved procedures.

2. Detailed Data File Submission Standards

a. Internal Consistency Validations.

Internal consistency validations involve evaluating the logical relationships between data elements in a detailed record. For example, a child cannot be discharged from foster care before he or she has been removed from his or her home. Thus, the Date of Latest Removal From Home data element must be a date prior to the Date of Discharge. If this is not case, an internal inconsistency will be detected and an ''error'' indicated in the detailed data file.

A number of data elements have ''if applicable'' contingency relationships with other data elements in the detailed record. For example, if the Foster Family Structure has only a single parent, then the appropriate sex of the Single Female/Male element in the ''Year of Birth'' and ''Race/Origin'' elements must be completed and the ''non-applicable'' fields for these elements are to be filled with zero's or, for dates, left blank.

The internal consistency validations that will be performed on the foster care detailed data are as follows:

(1) The Local Agency must be the county or a county equivalent unit which has responsibility for the case. The 5 digit Federal Information Processing Standard (FIPS) code must be used.

(2) If Date of Latest Removal From Home (Element 21) is less than nine months prior to the Report Period Ending Date (Element 2) then the Date of Most Recent Periodic Review (Element 5) may be left blank.

(3) If Date of Latest Removal From Home (Element 21) is greater than nine months from Report Date (Element 2) then the Date of Most Recent Periodic Review (Element 5) must not be more than nine months prior to the Report Date (Element 2).

(4) If a child is identified as having a disability(ies) (Element 10), at least one Type of Disability Condition (Elements 11–15) must be indicated. Enter a zero (0) for disabilities that do not apply.

(5) If the Total Number of Removals From Home to Date (Element 19) is one (1), the Date Child was Discharged From Last Foster Care Episode (Element 20) must be blank.

(6) If the Total Number of Removals From Home to Date (Element 19) is two or more, then the Date Child was Discharged From Last Foster Care Episode (Element 20) must *not* be blank.

(7) If Data Child was Discharged From Last Foster Care Episode (Element 20) exists, then this date must be a date prior to the Date of Latest Removal From Home (Element 21).

(8) The Date of Latest Removal From Home (Element 21) must be prior to the Date of Placement in Current Foster Care Setting (Element 23).

(9) At least one element between elements 26 and 40 must be answered by selecting a ''1''. Enter a zero (0) for conditions that do not apply.

(10) If Current Placement Setting (Element 41) is a value that indicates that the child is not in a foster family or a pre-adoptive home, then elements 49–55 must be zero (0).

(11) At least one element between elements 59 and 65 must be answered by selecting a ''1''. Enter a zero for sources that do not apply.

(12) If the answer to the question, ''Has this child ever been adopted?'' (Element 16)

is ''1'' (Yes), then the question, ''How old was the child when the adoption was legalized?'' (Element 17) must have an answer from ''1'' to ''5.''

(13) If the Date of Most Recent Periodic Review (Element 5) is not blank, then Manner of Removal From Home for Current Placement Episode (Element 25) cannot be option 3, ''Not Yet Determined.''

(14) If Reason for Discharge (Element 58) is option 3, ''Adoption,'' then Parental Rights Termination dates (Elements 46 and 47) must not be blank.

(15) If the Date of Latest Removal From Home (Element 21) is present, the Date of Latest Removal From Home Transaction Date (Element 22) must be present and must be later than or equal to the Date of Latest Removal From Home (Element 21).

(16) If the Date of Discharge From Foster Care (Element 56) is present, the Date of Discharge From Foster Care Transaction Date (Element 57) must be present and must be later than or equal to the Date of Discharge From Foster Care (Element 56).

(17) If the Date of Discharge From Foster Care (Element 56) is present, it must be after the Date of Latest Removal From Home (Element 21).

b. Out-of-Range Standards.

Out-of-range standards relate to the occurrence of values in response to data elements that exceed, either positively or negatively, the acceptable range of responses to the question. For example, if the acceptable responses to the element, Sex of the Adoptive Child, is ''1'' for a male and ''2'' for a female, but the datum provided in the element is ''3,'' this represents an out-of-range response situation.

Out-of-range comparisons will be made for all elements. The acceptable values are described in Appendix A, Section I.

3. Missing Data Standards

The term ''missing data'' refers to instances where data for an element are required but are not present in the submission. Data elements with values of ''Unable to Determine,'' ''Not Yet Determined'' or which are not applicable, are not considered missing.

a. In addition, the following situations will result in converting data values to a missing data status:

(1) Data elements whose values fail internal consistency validations as outlined in A.2.a.(1)–(17) above, and

(2) Data elements whose values are out-of-range.

b. The maximum amount of allowable missing data is dependent on the data elements as described below:

(1) No Missing Data.

The data for the elements listed below must be present in all records in the submission. If any record contains missing data for any of these elements, the entire submission will be considered missing and processing will not proceed.

Element No.	Element name
01	State.
02	Report date.
03	Local agency FIPS code.
04	Record number.

(2) Less Than Ten Percent Missing Data.

The data for the elements listed below cannot have ten percent or more missing data without incurring a penalty.

Element No.	Element description
05	Date of most recent periodic, review.
06	Child's date of birth.
07	Child's sex.
08	Child's race.
09	Hispanic origin.
10	Does child have a disability(ies)?
11–15	Type of disability (at least one must be selected).
16	Has child been adopted?
17	How old was child when adoption was legalized?
18	Date of first removal from home.
19	Total number of removals from home to date.
20	Date child was discharged from last foster care.
21	Date of latest removal from home.
22	Removal transaction date.
23	Date of placement in current foster care setting.
24	Number of previous placement settings during this removal episode.
25	Manner of removal from home for current placement episode.
26–40	Actions or conditions associated with child's removal (at least one must be selected).
41	Current placement setting.
42	Out of State placement.
43	Most recent case plan goal.
44	Caretaker family structure.
45	Year of birth of 1st principal caretaker.
46	Year of birth of 2nd principal caretaker.
47	Date of mother's parental rights termination.
48	Legal of putative father parental rights termination date.
49	Foster family structure.
50	Year of birth of 1st foster caretaker.
51	Year of birth of 2nd foster caretaker.
52	Race of 1st foster caretaker.
53	Hispanic 1st foster caretaker.
54	Race of 2nd foster caretaker.
55	Hispanic 2nd foster caretaker.
56	Date of discharge from foster care.
57	Foster care discharge transaction date.
58	Reason for discharge.
59–65	Sources of Federal support/assistance for child (at least one must be selected).
66	Amount of monthly foster care payment (regardless of source).

c. Penalty Processing.

Missing data are a major factor in determining the application of the penalty provisions of this regulation.

(1) Selection Rules.

All data elements will be used in calculating the missing data provision of the penalty

unless one of the following limiting rules applies to the detailed case record.

(a) If Date of Latest Removal From Home (Element 21) and the Date of Discharge From Foster Care (Element 56) is less than 30 days, then the following date elements are the only ones to be used in evaluating the missing data provisions for purposes of penalty calculation:

Elements
1 to 4
6 to 9
21 and 22
41 and 42
56 to 58

(b) If Date of Latest Removal From Home (Element 18) is prior to October 1, 1995, then the following data elements are the only ones to be used in evaluating the missing data provisions for purposes of penalty calculation:

Elements
1 to 4
6 to 9
21 and 22
41 and 43
56 to 58

(2) Penalty Calculations.

The percentage calculation will be performed for each data element. The total number of detailed records that are included by the selection rules in 3.c.(1), will serve as the denominator. The number of missing data occurrences for each element will serve as the numerator. The result will be multiplied by one hundred. The penalty is invoked when any one element's missing data percentage is ten percent or greater.

4. Timeliness of Foster Care Data Reports

The semi-annual reporting periods will be as of the end of March and September for each year. The States are required to submit reports within 45 calendar days after the end of the semi-annual reporting period.

Computer generated transaction dates indicate the date when key foster care events are entered into the State's computer system. The intent of these transaction dates is to ensure that information about the status of children in foster care is recorded and, thus, reported in a timely manner.

a. Date of Latest Removal From Home

The Date of Latest Removal From Home Transaction Date (Element 22) must not be more than 60 days after the Date of Latest Removal From Home (Element 21) event.

b. Date of Discharge From Foster Care

The Date of Discharge From Foster Care Transaction Date (Element 57) must not be more than 60 days after the Date of Discharge From Foster Care (Element 56) event.

For purposes of penalty processing, ninety percent of the records in a detailed data submission, must indicate that:

(1) The difference between the Date of Latest Removal From Home Transaction Date (Element 22) and the Date of Latest Removal From Home (Element 21) event is 60 days or less;

and, where applicable,

(2) The difference between the Date of Discharge From Foster Care Transaction Date (Element 57), and the Date of Discharge From Foster Care (Element 56) event is 60 days or less.

B. Adoption

1. Summary Data Elements File Submission Standards

A summary file must accompany the detailed Data Elements File submission. Both files must be sent through electronic means (see appendix C for details). This summary will be used to verify the completeness of the Detailed Data File submission received.

a. The summary file should be a discrete file separate from the semi-annual reporting period detailed data file. The record layout for the summary file is included in appendix D, section B.2.c. All data must be included. If the value for a numeric field is zero, zero must be entered.

b. The Department will develop a second summary file by computing the values from the detailed data file received from the State. The two summary files (the one submitted by the State and the one created during Federal processing) will be compared, field by field. If the two files match, further validation of the detailed data elements will commence. (See section B.2 below.) If the two summary files do not match, we will assume that there has been an error in transmission and will request a retransmission from the State within 24 hours of the time the State has been notified. In addition, a log of these occurrences will be kept as a means of cataloging problems and offering suggestions on improved procedures.

2. Detailed Data Elements File Submission Standards

a. Internal Consistency Validations

Internal consistency validations involve evaluating the logical relationships between data elements in a detailed record. For example, an adoption cannot be finalized until parental rights have been terminated. Thus, the dates of Mother/Father Termination of Parental Rights, elements must be present and the dates must be prior to the ''Date Adoption Legalized.'' If this is not the case, an internal inconsistency will be detected and an ''error'' indicated in the detailed data file.

A number of data elements have ''if applicable'' contingency relationships with other data elements in the detailed record. For example, if the Adoptive Parent is single, then

the appropriate sex of the single female/male element in the ''Family Structure,'' ''Year of Birth'' and ''Race/Origin'' elements must be completed and the ''non-applicable'' fields for these elements are to be filled with zeros or left blank.

The internal consistency validations that will be performed on the adoption detailed data are as follows:

(1) The Child's Date of Birth (Element 5) must be later than both the Mother's and Father's Year of Birth (Elements 16 and 17) unless either of these is unknown.)

(2) If the State child welfare agency has determined that the child is a special needs child (Element 9), then ''the primary basis for determining that this child has special needs'' (Element 10) must be completed. If ''the primary basis for determining that this child has special needs'' (Element 10) is answered by option ''4,'' then at least one element between Elements 11–15, ''Type of Disability,'' must be selected. Enter a zero (0) for disabilities that do not apply.

(3) Dates of Parental Rights Termination (Elements 19 and 20) must be completed and must be prior to the Date Adoption Legalized (Element 21).

(4) If ''Is a monthly financial subsidy being paid for this child'' (Element 35) is answered negatively, ''2'', then Element 36 must be zero (0) and ''Is the subsidy paid under Title IV–E adoption assistance'' (Element 37) must be a ''2''.

(5) If the ''Child Was Placed By'' (Element 34) is answered with option 1, ''Public Agency,'' then the question, ''Did the State Agency Have any Involvement in This Adoption'' (Element 4) must be ''1''.

(6) If the ''Relationship of Adoptive Parent(s) to the Child,'' ''Foster Parent of Child'' (Element 31) is selected, then the question, ''Did the State Agency Have any Involvement in This Adoption'' (Element 4) must be ''1''.

(7) If ''Is a monthly financial subsidy being paid for this child?'' (Element 35) answered ''1,'' then the question, ''Did the State Agency Have any Involvement in This Adoption'' (Element 4) must be ''1.''

(8) If the ''Family Structure'' (Element 22) is option 3, Single Female, then the Mother's Year of Birth (Element 23), the ''Adoptive Mothers's Race'' (Element 25) and ''Hispanic Origin'' (Element 26) must be completed. Similarly, if the ''Family Structure'' (Element 22) is option 4, Single Male, then the Father's Year of Birth (Element 24), the ''Adoptive Fathers's Race'' (Element 27) and ''Hispanic Origin'' (Element 28) must be completed. If the ''Family Structure'' (Element 22) is option 1 or 2, then both Mother's and Father's ''Year of Birth,'' ''Race'' and ''Hispanic Origin'' must be completed.

b. Out-of-Range Standards.

Out-of-range standards relate to the occurrence of values in response to data elements that exceed, either positively or negatively, the acceptable range of responses to the question. For example, if the acceptable response to the element, Sex of the Adoptive Child, is ''1'' for a male and ''2'' for a female, but the datum provided in the element is ''3,'' this represents an out-of-range response situation.

Out-of-range comparisons will be made for all elements. The acceptable values are described in appendix B, section I.

3. Missing Data Standards

The term ''missing data'' refers to instances where data for an element are required but are not present in the submission. Data elements with values of ''Unable to Determine,'' ''Other'' or which are not applicable, are *not* considered missing.

a. In addition, the following situations will result in converting data values to a missing data status:

(1) Data elements whose values fail internal consistency validations as outlined in 2.a.(1)–(8) above, and

(2) Data elements whose values are out-of-range.

b. The maximum amount of allowable missing data is dependent on the data elements as described below.

(1) No Missing Data.

The data for the elements listed below must be present in all records in the submission. If any record contains missing data for any of these elements, the entire submission will be considered missing and processing will not proceed.

Element No.	Element name
01	State.
02	Report date.
03	Record number.
04	Did the State agency have any involvement in this adoption?

(2) Less Than Ten Percent Missing Data

The data for the elements listed below cannot have ten percent or more missing data without incurring a penalty.

Element No.	Element name
05	Child's date of birth.
06	Child's sex.
07	Child's race.
08	Is child hispanic?
09	Does child have special needs?
10	Indicate the primary basis for determining that the child has special needs. (If Element 09 is yes, you must answer this question.)
11–15	Type of special need (at least one must be selected.)
16	Mother's year of birth.
17	Father's year of birth.
18	Was mother married at time of child's birth?
19	Date of mother's termination of parental rights.
20	Date of father's termination of parental rights.
21	Date adoption legalized.
22	Adoptive parent(s)' family structure.

Element No.	Element name
23	Mother's year of birth.
24	Father's year of birth.
25	Adoptive mother's race.
26	Hispanic mother.
27	Adoptive father's race.
28	Hispanic father.
29–32	Relationship of adoptive parent(s) to child (at least one must be selected.)
33	Child placed from.
34	Child placed by.
35	Is a monthly financial subsidy paid for this child?
36	If yes, the monthly amount is?
37	Is the child receiving Title IV–E adoption assistance? (If Element 35 is a "1" (Yes) an answer to this question is required.)

c. Penalty Processing.

Missing data are a major factor in determining the application of the penalty provisions of this regulation.

(1) Selection Rules.

Only the adoption records with a ''1'' (Yes) answer in Element 4, ''Did the State Agency have any Involvement in this adoption'' will be subject to the penalty assessment process.

(2) Penalty Calculations.

The percentage calculation will be performed for each data element. The total number of detailed records will serve as the denominator and the number of missing data occurrences for each element will serve as the numerator. The result will be multiplied by one hundred. The penalty is invoked when any one element's missing data percentage is ten percent or greater.

4. Timeliness of Adoption Data Reports

The semi-annual reporting periods will be as of the end of March and September for each year. The States are required to submit reports within 45 calendar days after the end of the semi-annual reporting period.

For penalty assessment purposes, however, no specific timeliness of data standards apply. Data on adoptions should be submitted as promptly after finalization as possible.

The desired approach to reporting adoption data is that adoptions should be reported during the reporting period in which the adoption is legalized. Or, at the State's option, they can be reported in the following reporting period if the adoption is legalized within the last 60 days of the reporting period.

Negative reports must be submitted for any semi-annual period in which no adoptions have been legalized.

[58 FR 67934, Dec. 22, 1993; 59 FR 13535, Mar. 22, 1994, as amended at 60 FR 40508, Aug. 9, 1995]

APPENDIX F TO PART 1355

ALLOTMENT OF FUNDS WITH 427 INCENTIVE FUNDS TITLE IV–B CHILD WELFARE SERVICES FISCAL YEAR 1993

Name of State	Allotment at $294,624,000 [1]	Allotment at $141,000,000 [1]	427 incentive funds
Alabama	5,798,251	2,771,128	3,027,123
Alaska	674,777	355,179	319,598
Arizona	4,781,390	2,291,632	2,489,758
Arkansas	3,495,975	1,685,501	1,810,474
California	30,048,818	14,206,363	15,842,455
Colorado	3,844,876	1,850,024	1,994,852
Connecticut	2,065,826	1,011,122	1,054,704
Delaware	763,822	397,168	366,654
Dist of Col	448,212	248,344	199,868
Florida	12,946,006	6,141,615	6,804,391
Georgia	8,386,050	3,991,391	4,394,659
Hawaii	1,281,048	641,063	639,985
Idaho	1,734,494	854,884	879,610
Illinois	12,157,021	5,769,574	6,387,447
Indiana	7,115,189	3,392,123	3,723,066
Iowa	3,565,712	1,718,385	1,847,327
Kansas	3,083,341	1,490,926	1,592,415
Kentucky	5,192,133	2,485,316	2,706,817
Louisiana	6,750,330	3,220,076	3,530,254
Maine	1,533,067	759,902	773,165
Maryland	4,256,288	2,044,023	2,212,265
Massachusetts	4,566,755	2,190,422	2,376,333
Michigan	10,860,253	5,158,089	5,702,164
Minnesota	5,092,532	2,438,349	2,654,183
Mississippi	4,437,556	2,129,499	2,308,057
Missouri	6,217,709	2,968,921	3,248,788
Montana	1,211,809	608,414	603,395
Nebraska	2,136,670	1,044,528	1,092,142
Nevada	1,326,362	662,431	663,931
New Hampshire	1,078,123	545,375	532,748
New Jersey	5,307,662	2,539,793	2,767,869
New Mexico	2,493,475	1,212,778	1,280,697

ALLOTMENT OF FUNDS WITH 427 INCENTIVE FUNDS TITLE IV–B CHILD WELFARE SERVICES FISCAL YEAR 1993—Continued

Name of State	Allotment at $294,624,000 [1]	Allotment at $141,000,000 [1]	427 incentive funds
New York	15,530,358	7,360,253	8,170,105
North Carolina	8,326,069	3,963,107	4,362,962
North Dakota	982,955	500,499	482,456
Ohio	13,052,582	6,191,871	6,860,711
Oklahoma	4,428,365	2,125,165	2,303,200
Oregon	3,576,418	1,723,434	1,852,984
Pennsylvania	12,649,960	6,002,017	6,647,943
Rhode Island	1,070,439	541,752	528,687
South Carolina	5,101,221	2,442,447	2,658,774
South Dakota	1,107,009	558,996	548,013
Tennessee	6,328,617	3,021,219	3,307,398
Texas	23,687,998	11,206,947	12,481,051
Utah	3,478,384	1,667,206	1,801,178
Vermont	749,584	390,454	359,130
Virginia	6,321,841	3,018,024	3,303,817
Washington	5,667,518	2,709,481	2,958,037
West Virginia	2,564,554	1,246,294	1,318,260
Wisconsin	6,033,052	2,881,847	3,151,205
Wyoming	751,264	391,247	360,017

[1] These totals include allotments to the United States Territories. Therefore, the summation of the States' allotments will not be equivalent.

[58 FR 67937, Dec. 22, 1993]

PART 1356—REQUIREMENTS APPLICABLE TO TITLE IV–E

Sec.

AUTHORITY: 42 U.S.C. 620 et seq., 42 U.S.C. 670 et seq.; 42 U.S.C. 1302.

§ 1356.10 Scope.

This part applies to State programs for foster care maintenance payments, adoption assistance payments and related administrative and training expenditures under title IV–E of the Act.

[48 FR 23115, May 23, 1983]

§ 1356.20 State plan document and submission requirements.

(a) To be in compliance with the State plan requirements and to be eligible to receive Federal financial participation (FFP) in the costs of foster care maintenance payments and adoption assistance under this part, a State must have a State plan approved by the Secretary that meets the requirements of this part, part 1355 and section 471(a) of the Act. The title IV–E State plan must be submitted to the appropriate Regional Office, ACYF, in a form determined by the State.

(b) Failure by a State to comply with the requirements and standards for the data reporting system for foster care and adoption (§ 1355.40 of this chapter) shall be considered a substantial failure by the State in complying with the State plan for title IV–E. Penalties as described in § 1355.40(e) of this chapter shall apply.

(c) For purposes of the application of penalties described in § 1355.40 of this chapter, the requirement at § 201.6(e) regarding the withholding of funds until the Secretary ''* * * is satisfied that there will no longer be any such failure to comply * * *'' will be met by submission of one acceptable regularly scheduled semi-annual data transmission of the type which was the cause of the penalty.

(d) If a State chooses to claim FFP for voluntary foster care placements, the State must meet the requirements of paragraph (a) of this section and section 102 of Pub. L. 96–272, the Adoption Assistance and Child Welfare Act of 1980, as it amends section 472 of the Act.

(e) The following procedures for approval of State plans and amendments apply to the title IV–E program:

(1) The State plan consists of written documents furnished by the State to cover its program under part E of title IV. After approval of the original plan by the Commissioner, ACYF, all relevant changes, required by new statutes, rules, regulations, interpretations, and court decisions, are required to be submitted currently so that ACYF may determine whether the plan continues to meet Federal requirements and policies.

(2) *Submittal.* State plans and revisions of the plans are submitted first to the State governor or his designee for review and then to the regional office, ACYF. The States are encouraged to obtain consultation of the regional staff when a plan is in process of preparation or revision.

(3) *Review.* Staff in the regional offices are responsible for review of State plans and amendments. They also initiate discussion with the State agency on clarification of significant aspects of the plan which come to their attention in the course of this review. State plan material on which the regional staff has questions concerning the application of Federal policy is referred with recommendations as required to the central office for technical assistance. Comments and suggestions, including those of consultants in specified areas, may be prepared by the central office for use by the regional staff in negotiations with the State agency.

(4) *Action.* The Regional Office, ACYF, exercises delegated authority to take affirmative action on State plans and amendments thereto on the basis of policy statements or precedents previously approved by the Commissioner, ACYF. The Commissioner, ACYF, retains authority for determining that proposed plan material is not approvable, or that a previously approved plan no longer meets the requirements for approval, except that a final determination of disapproval may not be made without prior consultation and discussion by the Commissioner, ACYF with the Secretary. The Regional Office, ACYF, formally notifies the State agency of the actions taken on State plans or revisions.

(5) *Basis for approval.* Determinations as to whether State plans (including plan amendments and administrative practice under the plans) originally meet or continue to meet, the requirements for approval are based on relevant Federal statutes and regulations.

(6) *Prompt approval of State plans.* The determination as to whether a State plan submitted for approval conforms to the requirements for approval under the Act and regulations issued pursuant thereto shall be made promptly and not later than the 45th day following the date on which the plan submittal is received in the regional office, unless the Regional Office, ACYF, has secured from the State agency a written agreement to extend that period.

(7) *Prompt approval of plan amendments.* Any amendment of an approved State plan may, at the option of the State, be considered as a submission of a new State plan. If the State requests that such amendment be so considered the determination as to its conformity with the requirements for approval shall be made promptly and not later than the 45th day following the date on which such a request is received in the regional office with respect to an amendment that has been received in such office, unless the Regional Office, ACYF, has secured from the State agency a written agreement to extend that period. In absence of request by a State that an amendment of an approved State plan shall be considered as a submission of a new State plan, the procedures under §201.6 (a) and (b) shall be applicable.

(8) *Effective date.* The effective date of a new plan may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted, and with respect to expenditures for assistance under such plan, may not be earlier than the first day on which the plan is in operation on a statewide

basis. The same applies with respect to plan amendments.

(f) Once the title IV–E State plan has been submitted and approved, it shall remain in effect until amendments are required. An amendment is required if there is any significant and relevant change in the information or assurances in the plan, or the organization, policies or operations described in the plan.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980–0141)

[48 FR 23115, May 23, 1983, as amended at 58 FR 67938, Dec. 22, 1993]

§ 1356.21 Foster care maintenance payments program implementation requirements.

(a) To implement the foster care maintenance payments program provisions of the title IV–E State plan and to be eligible to receive Federal financial participation for foster care maintenance payments under this part, a State must meet the requirements of this section, and sections 472, 475(1), 475(4), 475(5) (A) and (B) and 475(6) of the Act.

(b) In meeting the ''reasonable efforts'' requirements of sections 471(a)(15) and 472(a)(1) of the Act, effective October 1, 1983, the State must meet the requirements of paragraph (d)(4) of this section. (See also section 45 CFR 1357.15(e) for examples of services.)

(c) In meeting the requirements of section 471(a)(16) of the Act for a case review system, each State's case review system must meet the requirements of sections 475(5)(B) and 475(6) of the Act.

(d) In meeting the case plan requirements of sections 471(a)(16), 475(1) and 475(5)(A) of the Act, the State agency must promulgate policy materials and instructions for use by State and local staff to determine the appropriateness of and necessity for the foster care placement of the child. The case plan for each child must:

(1) Be a written document, which is a discrete part of the case record, in a format determined by the State, which is available to the parent(s) or guardian of the foster child; and

(2) Be developed within a reasonable period, to be established by the State, but in no event later than 60 days starting at the time the State agency assumes responsibility for providing services including placing the child; and

(3) Include a discussion of how the plan is designed to achieve a placement in the least restrictive (most family-like) setting available and in close proximity to the home of the parent(s), consistent with the best interest and special needs of the child; and

(4) After October 1, 1983, include a description of the services offered and the services provided to prevent removal of the child from the home and to reunify the family.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980–0140)

(e) If a State chooses to claim FFP for the costs of voluntary foster care maintenance payment; chooses to transfer funds from title IV–E to title IV–B, or certifies compliance with the requirements of section 427 of the Act, it must, among other requirements, meet the requirements for dispositional hearings in section 475(5)(C) of the Act. In meeting the requirements of section 475(5)(C), the dispositional hearing must take place within 18 months of the date of the original foster care placement and within reasonable, specific, time-limited periods to be established by the State. The provisions of this paragraph and section 475(5)(C) of the Act must apply to all children under the responsibility for placement and care of the title IV–E/IV–B State agency except:

(1) For those children who are placed in a court sanctioned permanent foster family home placement with a specific care giver, no subsequent dispositional hearings are required during the continuation of that specific permanent placement. If the foster care placement of such a child is subsequently changed, the child is again entitled to dispositional hearings.

(2) For those children who are free for adoption and are placed in adoptive homes pending the finalization of the adoption, no subsequent dispositional

hearings are required during the continuation of that placement. If such a child is not adopted within a reasonable time after placement, the child is again entitled to dispositional hearings.

(f) For purposes of meeting the requirements of the Act and regulation with respect to paragraphs (c), (d) and (e) of this section, 45 CFR 1356.30(b) and sections 471(a)(16) and 475(5) of the Act, the following definition applies: *Original foster care placement* means the date of the child's most recent removal from his home and placement into foster care under the care and responsibility of the State agency. This definition is the point in time used in calculating all time periods related to the case review system. (See also section 475(5) of the Act.)

(g) In meeting the requirements of section 471(a)(11) of the Act, the State must review at reasonable, specific, time-limited periods to be established by the State:

(1) The amount of the payment made for foster care maintenance and adoption assistance to assure their continued appropriateness; and

(2) The licensing or approval standards for child care institutions and foster family homes.

(h) The specific foster care goals required under section 471(a)(14) of the Act must be incorporated into State law by statute or administrative regulation provided such administrative regulation has the force of law.

[48 FR 23115, May 23, 1983]

§ 1356.30 Implementation requirements for children voluntarily placed in foster care.

(a) As a condition of receipt of Federal financial participation (FFP) in foster care maintenance payments for a dependent child removed from his home under a voluntary placement agreement, the State must meet the requirements of:

(1) Section 472 of the Act (as amended by section 102(a) of Pub. L. 96–272);

(2) Section 102(d) of Pub. L. 96–272;

(3) Sections 427(b) and 475(5) of the Act;

(4) 45 CFR 1356.21 (e) and (f); and

(5) The requirements of this section.

(b) Federal financial participation is available only for voluntary foster care maintenance expenditures made within the first 180 days after the date of the original foster care placement unless there has been a judicial determination by a court of competent jurisdiction within the first 180 days of the date of that original placement to the effect that the continued voluntary placement is in the best interests of the child.

(c) The State agency must establish and maintain a uniform procedure or system, consistent with State law, for revocation by the parent(s) of a voluntary placement agreement and return of the child.

[48 FR 23116, May 23, 1983]

§ 1356.40 Adoption assistance program: Administrative requirements to implement section 473 of the Act.

(a) To implement the adoption assistance program provisions of the title IV–E State plan and to be eligible for Federal financial participation in adoption assistance payments under this part, the State must meet the requirements of this section and sections 471(a), 473 and 475(3) of the Act.

(b) The adoption assistance agreement for payments pursuant to section 473(a)(2) must meet the requirements of section 475(3) of the Act and must:

(1) Be signed and in effect at the time of or prior to the final decree of adoption. A copy of the signed agreement must be given to each party; and

(2) Specify its duration; and

(3) Specify the nature and amount of any payment, services and assistance to be provided under such agreement and, for purposes of eligibility under title XIX of the Act, specify that the child is eligible for Medicaid services; and

(4) Specify, with respect to agreements entered into on or after October 1, 1983, that the agreement shall remain in effect regardless of the State of which the adoptive parents are residents at any given time.

(c) There must be no income eligibility requirement (means test) for the prospective adoptive parent(s) in determining eligibility for adoption assistance payments.

(d) In the event an adoptive family moves from one State to another State, the family may apply for social services on behalf of the adoptive child in the new State of residence. However, for agreements entered into on or after October 1, 1983, if a needed service(s) specified in the adoption assistance agreement is not available in the new State of residence, the State making the original adoption assistance payment remains financially responsible for providing the specified service(s).

(e) A State may make an adoption assistance agreement with adopting parent(s) who reside in another State. If so, all provisions of this section apply.

(f) The State agency must actively seek ways to promote the adoption assistance program.

[48 FR 23116, May 23, 1983, as amended at 53 FR 50220, Dec. 14, 1988]

§ 1356.41 Nonrecurring expenses of adoption.

(a) The amount of the payment made for nonrecurring expenses of adoption shall be determined through agreement between the adopting parent(s) and the State agency administering the program. The agreement must indicate the nature and amount of the nonrecurring expenses to be paid.

(b) The agreement for nonrecurring expenses may be a separate document or a part of an agreement for either State or Federal adoption assistance payments or services. The agreement for nonrecurring expenses must be signed prior to the final decree of adoption, with two exceptions:

(1) Cases in which the final decree of adoption was entered into on or after January 1, 1987 and within six months after the effective date of the final rule; or

(2) Cases in which a final decree was entered into before January 1, 1987 but nonrecurring adoption expenses were paid after January 1, 1987.

(c) There must be no income eligibility requirement (means test) for adopting parents in determining whether payments for nonrecurring expenses of adoption shall be made. However, parents cannot be reimbursed for out-of-pocket expenses for which they have otherwise been reimbursed.

(d) For purposes of payment of nonrecurring expenses of adoption, the State must determine that the child is a ''child with special needs'' as defined in section 473(c) of the Act, and that the child has been placed for adoption in accordance with applicable State and local laws; the child need not meet the categorical eligibility requirements at section 473(a)(2).

(e)(1) The State agency must notify all appropriate courts and all public and licensed private nonprofit adoption agencies of the availability of funds for the nonrecurring expenses of adoption of children with special needs as well as where and how interested persons may apply for these funds. This information should routinely be made available to all persons who inquire about adoption services after the publication date of this final rule.

(2) The State agency must send a notice to all public and private nonprofit adoption agencies directing them to notify all their clients who adopted a special needs child between January 1, 1986 and six months following the effective date of this rule of the availability of reimbursement for nonrecurring expenses paid after January 1, 1987.

(3) For adoptions in which a final decree is entered between January 1, 1987 and six months after the effective date of this rule, or where a final decree was entered before January 1, 1987 but nonrecurring adoption expenses were paid after January 1, 1987, individuals who seek reimbursement must enter into an agreement with the State agency and file a claim with the State agency within two years of the effective date of this rule. For adoptions in which a final decree is entered more than six months after the effective date of this rule, the agreement must be signed at the time of or prior to the final decree of adoption. In such cases, claims must be filed with the State agency within two years of the date of the final decree of adoption.

(f)(1) Funds expended by the State under an adoption assistance agreement, with respect to nonrecurring adoption expenses incurred by or on behalf of parents who adopt a child with special needs, shall be considered an administrative expenditure of the title IV–E Adoption Assistance Program.

Federal reimbursement is available at a 50 percent matching rate, for State expenditures up to $2,000, for any adoptive placement.

(2) States may set a reasonable lower maximum which must be based on reasonable charges, consistent with State and local practices, for special needs adoptions within the State. The basis for setting a lower maximum must be documented and available for public inspection.

(3) In cases where siblings are placed and adopted, either separately or as a unit, each child is treated as an individual with separate reimbursement for nonrecurring expenses up to the maximum amount allowable for each child.

(g) Federal financial participation for nonrecurring expenses of adoption is limited to costs incurred by or on behalf of adoptive parents that are not otherwise reimbursed from other sources. Payments for nonrecurring expenses shall be made either directly by the State agency or through another public or licensed nonprofit private agency.

(h) When the adoption of the child involves interstate placement, the State that enters into an adoption assistance agreement under section 473(a)(1)(B)(ii) of the Act or under a State subsidy program will be responsible for paying the nonrecurring adoption expenses of the child. In cases where there is interstate placement but no agreement for other Federal or State adoption assistance, the State in which the final adoption decree is issued will be responsible for reimbursement of nonrecurring expenses if the child meets the requirements of section 473(c).

(i) The term ''nonrecurring adoption expenses'' means reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs, which are not incurred in violation of State or Federal law, and which have not been reimbursed from other sources or other funds. ''Other expenses which are directly related to the legal adoption of a child with special needs'' means the costs of the adoption incurred by or on behalf of the parents and for which parents carry the ultimate liability for payment. Such costs may include the adoption study, including health and psychological examination, supervision of the placement prior to adoption, transportation and the reasonable costs of lodging and food for the child and/or the adoptive parents when necessary to complete the placement or adoption process.

(j) When State statutes must be amended in order to reimburse parents for nonrecurring expenses in the adoption of eligible children, legislation must be enacted before the close of the second general session following publication of the final rule and must apply retroactively to January 1, 1987. Failure to honor all eligible claims will be considered non-compliance by the State with Title IV–E of the Act.

(k) A State expenditure is considered made in the quarter during which the payment was made by a State agency to a private nonprofit agency, individual or vendor payee.

[53 FR 50220, Dec. 14, 1988]

§1356.50 Withholding of funds for noncompliance with the approved title IV–E State plan.

(a) To be in compliance with the title IV–E State plan requirements, a State must meet the requirements of the Act and 45 CFR 1356.20, 1356.21 and 1356.40 of this part.

(b) To be in compliance with the title IV–E State plan requirements, a State that chooses to claim FFP for voluntary placements must meet the requirements of the Act, 45 CFR 1356.30 and paragraph (a) of this section; and

(c) For purposes of this section, the provisions of 45 CFR part 213, Practice and Procedure for Hearings to States on Conformity of Public Assistance Plans to Federal Requirements, apply.

[48 FR 23117, May 23, 1983]

§1356.60 Fiscal requirements (title IV–E).

(a) *Federal matching funds for foster care maintenance and adoption assistance payments.* (1) Effective October 1, 1980, Federal financial participation (FFP) is available to States under an approved title IV–E State plan for allowable costs in expenditures for:

(i) Foster care maintenance payments as defined in section 475(4) of the Act, made in accordance with 45 CFR 1356.20 through 1356.30 of this part, section 472 of the Act and section 102(d) of Pub. L. 96–272, the Adoption Assistance and Child Welfare Act of 1980;

(ii) Adoption assistance payments made in accordance with 45 CFR 1356.20 and 1356.40 and sections 473 and 475(3) of the Act.

(2) Federal financial participation is available at the rate of the Federal medical assistance percentage as defined in section 1905(b) of the Act, Definitions, and pertinent regulations as promulgated by the Secretary, or his designee.

(b) *Federal matching funds for State and local training for foster care and adoption assistance under title IV–E.* (1) Federal financial participation is available at the rate of seventy-five percent (75%) in the costs of training personnel employed or preparing for employment by the State or local agency administering the plan.

(2) All training activities and costs funded under title IV–E shall be included in the State agency's training plan for title IV–B.

(3) Short and long term training at educational institutions and in-service training may be provided in accordance with the provisions of §§ 235.63 through 235.66(a) of this title.

(c) *Federal matching funds for other State and local administrative expenditures for foster care and adoption assistance under title IV–E.* Federal financial participation is available at the rate of fifty percent (50%) for administrative expenditures necessary for the proper and efficient administration of the title IV–E State plan. The State's cost allocation plan shall identify which costs are allocated and claimed under this program.

(1) The determination and redetermination of eligibility, fair hearings and appeals, rate setting and other costs directly related only to the administration of the foster care program under this part are deemed allowable administrative costs under this paragraph. They may not be claimed under any other section or Federal program.

(2) The following are examples of allowable administrative costs necessary for the administration of the foster care program:

(i) Referral to services;

(ii) Preparation for and participation in judicial determinations;

(iii) Placement of the child;

(iv) Development of the case plan;

(v) Case reviews;

(vi) Case management and supervision;

(vii) Recruitment and licensing of foster homes and institutions;

(viii) Rate setting; and

(ix) A proportionate share of related agency overhead.

(x) Costs related to data collection and reporting.

(3) Allowable administrative costs do not include the costs of social services provided to the child, the child's family or foster family which provide counseling or treatment to ameliorate or remedy personal problems, behaviors or home conditions.

(4) Foster and adoptive parents, and staff of licensed or approved child care insititutions providing foster care under this part shall be eligible for short-term training at the initiation of or during their provision of care. FFP directly related to such training shall be limited to travel and per diem.

(d) *Cost of the data collection system.* (1) Costs related to data collection system initiation, implementation and operation may be charged as an administrative cost of title IV–E at the 50 percent matching rate subject to the restrictions in paragraph (d) (2) of this section

(2) For information systems used for purposes other than those specified by section 479 of the Act, costs must be allocated and must bear the same ratio as the foster care and adoption population bears to the total population contained in the information system as verified by reports from all other programs included in the system.

(e) *Federal matching funds for SACWIS.* All expenditures of a State to plan, design, develop, install and operate the Statewide automated child welfare information system approved under § 1355.52 of this chapter, shall be treated as necessary for the proper and efficient administration of the State plan without regard to whether the system may be used with respect to

foster or adoptive children other than those on behalf of whom foster care maintenance or adoption assistance payments may be made under this part.

(Approved by the Office of Management and Budget under control numbers 0980–0130 and 0980–0131)

[47 FR 30925, July 15, 1982, as amended at 48 FR 23117, May 23, 1983; 53 FR 50221, Dec. 14, 1988; 58 FR 67938, 67947, Dec. 22, 1993]

§ 1356.65 State foster care allotment (title IV–E).

The State allotment for foster care under this part of Fiscal Years 1981 through 1984 shall be the greater amount as determined under paragraph (a) or (b) of this section; or, at the option of the State, under paragraph (c) of this section. This determination is made without regard to the allotment for any prior fiscal year except as specified under paragraph (c)(3) of this section. The State need not select the same option each year. The allotment is a single dollar amount, limiting Federal funds reimbursed to a State for foster care payments and related administrative expenditures (including training).

(a) The first method provides for the calculation of the base amount and adjustments for each fiscal year as follows:

(1) For purposes of determining allotments for later years, for Fiscal Year 1980, the State's allotment is the base amount increased by 21.2%.

(2) For each of the Fiscal Years 1981 through 1984, the allotment for the State shall be an amount equal to the State's allotment for the preceding fiscal year, increased or decreased by twice the change (but not more than 10%) in the percentage of the Consumer Price Index, prepared by the U.S. Department of Labor, and used to determine the cost of living adjustments for Social Security benefits under section 215(i) of the Act, Cost of Living Increases in Benefits. For this calculation, second quarter data of the preceding fiscal year shall be compared to those for the second quarter of the second preceding fiscal year. The arithmetic mean for the three months of the second quarter shall be used to establish the Consumer Price Index for this quarter.

(3) The base amount in paragraph (a)(1) of this section, is calculated using the following formula: Maintenance payments plus attributable administrative expenditures plus attributable training expenditures. For the purposes of this formula:

(i) *Maintenance payments* are determined by:

(A) The amount of Federal funds that have been or may be paid on behalf of allowable claims for foster care maintenance payments for FY 1978 submitted to DHHS in accordance with section 306 of Pub. L. 96–272 (94 Stat. 530); and

(B) The amount of Federal funds that would have been paid for allowable claims on behalf of children meeting all requirements of section 408 of the Act for FY 1978 except that the State, on a Statewide basis, did not make such payments under State law, regulation or policy solely because the foster care was provided by a relative(s) of a child.

(ii) *Attributable administrative expenditures* means State expenditures for Fiscal Year 1978 attributable to the performance of activities required under section 408 of the Act for children for whom maintenance payments are included under paragraphs (a)(3)(i) (A) and (B) of this section, regardless of whether payment for the administrative expenditures might have been made under section 403 of the Act. Expenditures which may be included are limited to costs of conducting for those children: eligibility determination and redetermination, quality control, fair hearings and appeals, agency activities in judicial determination, placement, case review, case management and supervision, rate-setting, recruitment of foster care homes and institutions, licensing and a proportionate share of general related agency overhead. The amount of these expenditures is determined by one of the following three methods:

(A) By actual administrative expenditures attributable to the provision of foster care maintenance payments for Fiscal Year 1978, multiplied by 50%, if a State submits a report of these expenditures which is satisfactory to the

Secretary and which is supported by documentation;

(B) By an amount determined by the following formula:

(*1*) The State's total AFDC administrative expenditures for Fiscal Year 1978 divided by the State's average monthly number of AFDC cases in fiscal year 1978;

(*2*) The result of step (*1*) multiplied by 50%;

(*3*) The product of step (*2*) multiplied by the average monthly number of AFDC-Foster Care cases in Fiscal Year 1978; or

(C) By an amount determined as follows:

(*1*) The State's administrative expenditures (as stated in § 1356.60(c)) of this part attributable to foster care maintenance payments made under title IV–E or IV–A during a period of three or more calendar months of Fiscal Year 1981 divided by the number of months in the period;

(*2*) The result of (*1*) reduced to the comparable Fiscal Year 1978 amount by use of the Implicit Price Deflator for State and Local Government Purchases (issued by the U.S. Department of Commerce);

(*3*) The result of (*2*) multiplied by the ratio of the average monthly number of AFDC-Foster Care cases in Fiscal Year 1978 compared to the comparable number of cases for the period used in (*1*);

(*4*) The product in (*3*) multiplied by 12 (for an annual amount); and

(*5*) The product in (*4*) multiplied by 50 percent (the FFP rate in administrative expenditures).

(*6*) The data in paragraph (*1*) need not have been paid or claimed under section 403 or 474 of the Act. They must have been reported to the Regional Program Director, ACYF no later than 30 days after the end of Fiscal Year 1981 in accordance with instructions from the Commissioner.

(iii) *Attributable Training Expenditures* are determined by:

(A) Actual training expenditures attributable to the provision of foster care maintenance payments for FY 1978, multiplied by 75%, if a State submits a report of these expenditures which is satisfactory to the Secretary and supported by documentation; or

(B) An amount determined by the following formula:

(*1*) The State's total AFDC training expenditurs for FY 1978 divided by the State's average monthly number of AFDC cases in FY 1978;

(*2*) The result of (*1*) multiplied by 75%;

(*3*) The product of (*2*) multiplied by the average monthly number of AFDC-Foster Care cases in FY 1978.

(iv) *Sources of data and documentation*. (A) All claims must be submitted on forms provided by the Secretary and in accordance with the constraints of Section 306 of Pub. L. 96–272 (94 Stat. 530).

(B) All reports to establish the claims which would have been allowable under paragraph (a) (3)(i)(B), (3)(ii)(A) of this section or

(*i*) Paragraph (a)(3)(iii)(A) of this section must have been submitted on forms provided by the secretary within forty-five (45) days after the end of the second quarter of FY 1981.

(v) *Disputed claims or reports.* (A) Only the following claims or reports in which DHHS and a State have a dispute will be included in the base amount:

(*1*) For maintenance payments, the claims submitted to DHHS in accordance with section 306 of Pub. L. 96–272, and the reports submitted to DHHS on expeditures and reported numbers of children under paragraph (3)(i)(B) of this section;

(*2*) For attributable administrative expenditures, the dollar amount reported to DHHS in accordance with paragraph (a)(3)(ii)(A) of this section;

(*3*) For attributable training expenditures, the dollar amount reported to DHHS in accordance with paragraph (a)(3)(iii)(A) of this section;

(*4*) Any claims or reported data in which a State and the Secretary have a dispute will be included in the base amount until the beginning of the fiscal year after the fiscal year in which the dispute is finally resolved by the Department. Allotments for fiscal years after solution of the dispute will be computed using the revised base amount.

(b) Under the second method, the allotment for the State equals an amount which bears the same ratio to

$100 million as the under age 18 population of that State bears to the under age 18 population of the fifty States and the District of Columbia.

(c) Eligible States may select that their allotment be calculated by a third method.

(1) A State may *not* exercise this option unless: (i) In FY 1978, the percentage of the average monthly number of children in the State under age 18 who received AFDC-foster care maintenance payments under title IV–A of the Act as a proportion of all children under age 18 in the State was less than the corresponding national percentage for the 50 States and the District of Columbia;

(ii) Beginning in FY 1982, the percentage of the State's average monthly number of children under age 18 who received foster care maintenance payments during the Fiscal Year under title IV–A or IV–E of the Act compared to the State's total number of children under age 18 during the Fiscal Year has not exceeded the corresponding national percentage of the 50 States and the District of Columbia during Fiscal Year 1978.

(2) Under this method, the allotment is calculated as follows: (i) The base amount is determined by applying the provisions of paragraph (a)(3) of this section.

(ii) If for any of the fiscal years 1981–1984, the average monthly number of children receiving foster care maintenance payments in the State under title IV–A or IV–E of the Act exceeds the average monthly number of such children in the State for FY 1978, the base amount for that fiscal year shall be further increased by the percentage of increase in the State's foster care maintenance payment average monthly caseload for that Fiscal Year under title IV–A or IV–E of the Act over its comparable caseload under title IV–A for Fiscal Year 1978. This percentage increase may not exceed: for FY 1981—33.1%; FY 1982—46.4%; FY 1983—61.1%; and FY 1984—77.2%.

(iii) Increases or decreases in the base amount for each fiscal year are made in accordance with paragraphs (a)(1) and (2) of this section.

(3) If the State no longer meets the conditions for exercising the State option provided in paragraph (c)(1) of this section, but selected this option for the determination of its allotment for the preceding fiscal year, the allotment for the preceding fiscal year shall be used for the purpose of determining allotments for subsequent fiscal years through Fiscal Year 1984.

(4) For the purpose of establishing the average monthly number of children receiving foster care maintenance payments under title IV–A of the Act in Fiscal Year 1978 under this section, children who except for their placement with related persons would have received foster care under section 408 of the Act shall be included even though they did not receive foster care maintenance payments.

(5) For purposes of this allotment, in the event that there is a dispute between a State and the Secretary as to the number of such children (with respect to whom foster care maintenance payments were not made) for any fiscal year, then until the beginning of the fiscal year immediately following the fiscal year in which the dispute is finally resolved by DHHS, determinations under the foregoing subparagraphs shall be made on the basis of the number of such children claimed by the State.

(6) Interim allotments for each fiscal year shall be issued by the Secretary, or his designee, for States eligible under this option (paragraph (c)(1) of this section) not later than six months after the beginning of the fiscal year. The interim allotments shall be based on the most satisfactory data then available. The final allotment shall be issued not later than nine months after the end of that fiscal year and shall be based on the most recent satisfactory data then available.

(d) The limitation on available funds imposed by the allotment will be effective only if:

(1) The appropriation under section 420 of the Act for that fiscal year equals or exceeds the following amounts: for Fiscal Year 1981—$163,550,000; 1982—$220,000,000; and for Fiscal Years 1983 and 1984—$266,000,000; and

(2) With respect to each of the Fiscal Years 1982–1984, the appropriation for title IV–B under section 420 of the Act

has been made before the beginning of the Fiscal Year to which the limitation applies.

(e) The State shall select the method for determining its allotment no later than forty-five (45) days after the end of the second quarter of the applicable (Federal) fiscal year.

[47 FR 30925, July 15, 1982]

§ 1356.70 Transfer of funds from title IV–E to title IV–B.

(a)(1) Funds available to the State within the foster care allotment for title IV–E which the State does not need for foster care purposes under title IV–E may be transferred to title IV–B and claimed by the State as reimbursement under that program only if the State has selected an allotment described under paragraph (a) or (b) of § 1356.65.

(2) If the limitation imposed by the allotment calculated under paragraph (a) or (b) of § 1356.65 is in effect, the amount of funds that a State may transfer to and claim under title IV–B is limited by the amount of funds not needed for foster care under title IV–E.

(3) If the limitation imposed by the allotment calculated under paragraph (a) or (b) of § 1356.65 is *not* in effect, the amount of funds that a State may transfer to and claim under title IV–B is further limited to the total amount of funds which, when added to the funds received under sections 420 and 424 of the Act for that Fiscal Year, would not exceed the State's share of the amounts listed in paragraph (d)(1) of § 1356.65.

(b) If the amount transferred to title IV–B, when added to the IV–B allotment, exceeds the amount which would be allotted to the State under title IV–B if the appropriation for title IV–B equaled $141 million, the State may transfer funds under paragraph (a) of this section only if it has met the requirements of section 427(a) of the Act.

(c) If the appropriation for each of any two consecutive fiscal years under section 420 of the Act equalled $266,000,000, the State may transfer funds under paragraph (a) of this section only if it has met the requirements of section 427(b) of the Act.

(d) If the total reimbursement to the State for expenditures under title IV–B (including transferred funds) equalled the State's share of $266,000,000 for each of two fiscal years in which the limitation under this section did *not* apply, the State may transfer funds under paragraph (a) of this section in any succeeding year only if it has met the requirements of section 427(b) of the Act.

(e) *Amount that may be transferred from title IV–E to title IV–B.* (1) The amount of funds that a State may transfer from title IV–E to title IV–B is:

(i) For any year in which the limitation specified under § 1356.65 is in effect, the amount by which the State's title IV–E foster care allotment exceeds the FFP in State expenditures needed for foster care maintenance payments and administrative expenditures, including training expenditures; and

(ii) For any year in which the limitations specified in § 1356.65 is *not* in effect, the amount determined under paragraph (e)(1)(i), of this section, is further limited to the amount which when added to the amount the State receives under section 420 of the Act (including any reallotted funds) does not exceed the amount of the State's allotment under section 420 of the Act which would have been in effect if the amount described under section 474(b)(2)(A) of the Act had been appropriated.

(2) Transferred funds must be used to reimburse expenditures under title IV–B (as defined under the regulations applicable to that program) for the same fiscal year for which they were originally available.

(i) The State shall apply for approval of transfer of these funds to the Regional ACYF office no later than August 15th, unless the Commissioner shall set a different date for all States because of special circumstances.

(ii) The procedures for application for funds and plans under title IV–B, including joint planning, shall apply to these funds.

(3) A State shall operate its foster care program under its State plan continuously throughout the time the plan is in effect, regardless of whether or

not it has transferred funds under this section.

[47 FR 30925, July 15, 1982; 47 FR 36647, Aug. 23, 1982]

PART 1357—REQUIREMENTS APPLICABLE TO TITLE IV–B

Sec.

AUTHORITY: 42 U.S.C. 620 et seq., 42 U.S.C. 670 et seq.; 42 U.S.C. 1302.

§ 1357.10 Scope and definitions.

(a) *Scope.* This part applies to State programs for child welfare services (including related administrative expenditures) under title IV–B of the Act.

(b) Child welfare services under the title IV–B State plan must be available on the basis of need for services and must not be denied on the basis of financial need or length of residence in the State.

(c) *Definitions. Child Welfare Services* means the definition of services contained in section 425(a)(1) of the Act for which the State agency is responsible. (For purposes of 45 CFR 1357.40, Direct Payments to Indian Tribal Organizations, substitute ''Indian Tribal Organization'' for ''State agency'' wherever State agency appears.)

Child Welfare Services Plan (CWSP) means the document developed through joint planning which describes the child welfare services program for which the State agency is responsible, including services, program deficiencies, plans for program improvement and allocation of resources by type of service.

Joint Planning means State and Federal review and analysis of the State's child welfare services, including analysis of the service needs of children and their families, selection of unmet service needs that will be addressed in a plan for program improvement, and development of goals and objectives to enhance the capability of the State in providing child welfare services.

[48 FR 23117, May 23, 1983]

§ 1357.15 Child welfare services State plan requirements and submittal.

(a) In order to be eligible for Federal financial participation (FFP) under this part and title IV–B of the Act, a State must have a Child Welfare Services State Plan (CWSP) which meets the requirements of this section, sections 422 (a) and (b) of the Act and 45 CFR part 1355.

(b) (1) The title IV–B State plan assurances required by sections 422(b) (1) through (4) and (7) and (8) of the Act may be submitted one time only and will remain in effect on an on-going basis. However, these assurances must be amended when significant changes are made in a State's program in these areas.

(2) The descriptive information on the State's services program required by section 422(b) (5) and (6) of the Act must be submitted and be in effect for one, two or three fiscal years. The State may select which of the three intervals it wishes to use.

(c) In meeting the requirements of section 422(b)(5) of the Act, the State plan must contain a description of child welfare services provided to children and their families in the State and specify the geographic areas where these services will be available.

(d) In meeting the coordination requirements of section 422(b)(2) of the Act, and in the event that an Indian Tribal Organization (ITO) in a State applies for and receives direct title IV–B funding under section 428 of the Act, the State agency must make every reasonable effort to coordinate its title IV–B program with the title IV–B program of the ITO. The State must provide a copy of the title IV–B State plan upon request of the ITO.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980–0142)

(e) (1) In implementing the requirements of this section and sections 427(a) (2)(C) and 427(b) (3) of the Act, the State must specify, in its title IV–

B State plan, which preplacement preventive and reunification services are available to children and families in need.

(2) The services specified may include: Twenty-four hour emergency caretaker, and homemaker services; day care; crisis counseling; individual and family counseling; emergency shelters; procedures and arrangements for access to available emergency financial assistance; arrangements for the provision of temporary child care to provide respite to the family for a brief period, as part of a plan for preventing children's removal from home; other services which the agency identifies as necessary and appropriate such as home-based family services, self-help groups, services to unmarried parents, provision of, or arrangements for, mental health, drug and alcohol abuse counseling, vocational counseling or vocational rehabilitation; and post adoption services.

(f) The State plan may be written in a form determined by the State.

(g) The jointly developed State plan must be submitted to the appropriate Regional Office, ACYF. The Regional Office, ACYF will notify the State when the State plan meets all the requirements of the Act.

(h) In meeting the requirements of section 422(b)(8), each State must provide assurances that it will meet the requirements for data reporting for foster care and adoption as described in 45 CFR 1355.40 and transmit the required data in the form and manner prescribed by that section.

[48 FR 23117, May 23, 1983, as amended at 58 FR 67938, Dec. 22, 1993; 59 FR 13535, Mar. 22, 1994]

§ 1357.20 Child abuse and neglect programs.

The State agency must assure that, with regard to any child abuse and neglect programs or projects funded under title IV–B of the Act, the requirements of paragraph (3) of section 4(b) of the Child Abuse Prevention and Treatment Act of 1974, as amended 42 U.S.C. Sec. 5103(b)(3) (Pub. L. 93–247), are met.

[48 FR 23118, May 23, 1983]

§ 1357.25 Requirements for eligibility for additional payments under section 427.

(a) For any fiscal year after FY 1979 in which a sum in excess of $141,000,000 is appropriated under Section 420 of the Act, a State is not eligible for payment of an amount greater than the amount for which it would be eligible if the appropriation were equal to $141,000,000 unless the State complies with the requirements of Section 427(a) of the Act.

(b) In meeting the requirements for the inventory and statewide information system in sections 427 (a)(1) and (2)(A) of the Act, the inventory and statewide information system must include those children under the placement and care responsibility of the State title IV–B or IV–E agencies. At the State's discretion, other children may be included. The six month requirement in section 427(a)(1) and the twelve month requirement in section 427(a)(2)(A) of the Act must also be met.

(The requirement has been approved by the Office of Management and Budget under OMB Control Number 0980–0138)

(c) If, for each of any two consecutive fiscal years after FY 1979, there is appropriated under Section 420 of the Act a sum equal to or greater than $266,000,000, a State's allotment amount for any fiscal year after two such consecutive fiscal years shall be reduced to an amount equal to what the allotment amount would have been for FY 1979 unless the State has implemented the requirements of section 427(b) of the Act.

(d) In meeting the requirements of section 427(a)(2)(B) of the Act for dispositional hearings the State agency must meet the requirements of section 475(5)(C) of the Act and 45 CFR 1356.21(e).

(e) A State may appeal a final decision by ACYF that the State has not met the requirements of this section and section 427 of the Act to the Department Grant Appeals Board under the provisions of 45 CFR part 16.

[48 FR 23118, May 23, 1983]

§ 1357.30 Fiscal requirements (title IV–B).

(a) The requirements of this section shall apply to all funds allotted or reallotted to States under title IV–B and to all funds not needed for foster care which are transferred from title IV–A or title IV–E and awarded to States under title IV–B.

(b) Allotments for each State shall be determined in accordance with section 421 of the Act.

(c) Payments to States shall be made in accordance with section 423 of the Act.

(d) In the event of a State's failure to comply with the terms of the grant under title IV–B and with the regulations listed in § 1355.30, the provisions of §§ 74.113 through 74.115 of this title shall apply.

(e) Federal financial participation is available only if costs are incurred in implementing sections 422, 423, and 425 and, when applicable, section 427 of the Act, and in accordance with the grants administration requirements of 45 CFR Part 74 except that—

(1) Non-public third party in-kind contributions may not be used to meet the requirements of the non-Federal share of the costs of programs funded under this part.

(2) The total of Federal funds used for the following purposes under title IV–B may not exceed an amount equal to the FY 1979 Federal payment under title IV–B:

(i) Child day care necessary solely because of the employment, or training to prepare for employment, of a parent or other relative with whom the child involved is living, plus;

(ii) Foster care maintenance payments, plus;

(iii) Adoption assistance payments.

(3) Notwithstanding paragraph (e)(2) of this section, State expenditures required to match the title IV–B allotment may include foster care maintenance expenditures in any amount.

(4) Funds awarded under title IV–B may not be used for the purchase, construction, or other capital costs for child care facilities.

(f) *Maintenance of effort.* (1) A State may not receive an amount of Federal funds under title IV–B in excess of the Federal payment made in FY 1979 under title IV–B unless the State's total expenditure of State and local appropriated funds for child welfare services under title IV–B of the Act is equal to or greater than the total of the State's expenditure from State and local appropriated funds used for similar covered services and programs under title IV–B in FY 1979.

(2) In computing a State's level of expenditures under this section in FY 1979 and any subsequent fiscal year, the following costs shall not be included—

(i) Expenditures and costs for child day care necessary to support the employment of a parent or other relative;

(ii) Foster care maintenance payments; and

(iii) Adoption assistance payments.

(3) A State applying for an amount of Federal funds under title IV–B greater than the amount of title IV–B funds received by that State in FY 1979 shall certify:

(i) The amount of their expenditure in FY 1979 for child welfare services as described in paragraphs (f) (1) and (2) of this section, and

(ii) The amount of State and local funds that have been appropriated and are available for child welfare services as described in paragraphs (f)(1) and (2) of this section for the fiscal year for which application for funds is being made.

Records verifying the required certification shall be maintained by the State and made available to the Secretary as necessary to confirm compliance with this section.

(g) *Reallotment.* (1) When a State certifies to the Commissioner that funds available to that State under its title IV–B allotment will not be required for carrying out that State's plan, those funds shall be available for reallotment to other States.

(2) When a State, after receiving notice from the Commissioner of the availability of funds, does *not* certify by a date fixed by the Commissioner that it will be able to obligate during the fiscal year all of the funds available to it under its title IV–B allotment, those funds shall be available for reallotment to other States.

(3) The Commissioner may reallot available funds to another State when he determines that—

(i) The requesting State's plan requires funds in excess of the State's original allotment; and

(ii) The State will be able to obligate the additional funds during the current fiscal year.

(4) To be eligible to receive funds under the reallotment provisions of this paragraph, the State shall submit an application by the date and in the form prescribed by the Commissioner.

(h) *Fiscal year of expenditures.* An expenditure under an annual budget will be charged to the FY in which the obligation was incurred (the year the Federal funds were awarded). Such budgets and expenditure reports as are required by the Commissioner will be prepared on this basis. For the purposes of this section and this paragraph, ''obligation'' means only bonafide encumberances or commitments which are supported by contracts or other evidence of liability consistent with State purchasing procedures.

(i) *Liquidation of obligations.* All obligations of the State agency incurred in carrying out the annual budget must be liquidated within 2 years or the period within which claims must be filed under title IV–B, whichever is earlier.

(Approved by the Office of Management and Budget under control number 0989–0047)

[47 FR 30928, July 15, 1982]

§ 1357.40 Direct payments to Indian Tribal Organizations (title IV-B, subpart 1, child welfare services).

(a) *Who may apply for direct funding?* Any Indian Tribal Organization (ITO) that meets the definitions in section 428(c) of the Act, or any consortium or other group of eligible tribal organizations authorized by the membership of the tribes to act for them, is eligible to apply for direct funding if the ITO, consortium or group has a plan for child welfare services that is jointly developed by the ITO and the Department.

(b) *Joint planning.* For purposes of this section, Joint Planning means ITO and Federal review and analysis of the ITO's child welfare services including analysis of the service needs of children and their families, selection of unmet service needs that will be addressed in a plan for program improvement, and development of goals and objectives to enhance the capability of the tribe providing child welfare services.

(c) *Title IV–B plan requirements.* The Indian Tribal Organization's title IV–B plan must meet all of the requirements of this paragraph. With respect to paragraph (c)(1) through (c)(5), of this section, the Indian Tribe/ITO must meet the requirements applicable to the State/State (or local) agency.

(1) Sections 422(a) and 422(b) (2) through (8) of the Act;

(2) 45 CFR 1355.20 and the definition of child welfare services in 45 CFR 1357.10(c);

(3) 45 CFR 1355.21(a);

(4) 45 CFR 1357.15(e);

(5) 45 CFR 1355.30 except that requirements of paragraphs (i) and (m) do not apply;

(6) The name of the ITO;

(7) A brief description of the ITO;

(8) A brief description of the legal and organizational relationship of the Tribal Organization to the Indians in the area to be served;

(9) A statement of the legal responsibility, if any, for children who are in foster care on the reservation and those awaiting adoption;

(10) A description of tribal jurisdiction in civil and criminal matters, existence or nonexistence of a tribal court and the type of court and codes, if any;

(11) An identification of the standards for foster family homes and institutional care and day care;

(12) The Indian Tribal Organization's political subdivisions, if any;

(13) Whether the Tribal Organization is controlled, sanctioned or chartered by the governing body of Indians to be served and if so, documentation of that fact;

(14) Any limitations on authorities granted the ITO; and

(15) The tribal resolution(s) authorizing it to apply for a direct title IV–B grant under this part.

(d) *Submittal of the title IV–B services plan and annual budget request.* (1) The ITO's title IV–B Annual Budget Request must be submitted, in a form and manner prescribed by the Department to the appropriate regional Office, ACYF.

(2) The title IV–B services plan must be submitted to the appropriate Regional Office, ACYF, in a form, determined by the ITO.

(3) (i) ITO's title IV–B plan may, at the ITO's option, be submitted in two parts. One part may contain the information and assurances that typically remain in effect on an on-going basis. This part of the plan may be submitted one time only but must be amended when significant changes occur in an ITO's program.

(ii) The items in paragraph (c) of this section that may be submitted on a one time only basis are: the assurances required by section 422(b)(1) through (4) and (7) and (8) of the Act and the information required in paragraphs (c) (6) through (15) of this section.

(iii) The second part of the ITO's IV–B plan must be submitted and in effect for one, two or three fiscal years. The ITO may select which of the three intervals it wishes to use. This part of the plan must contain the information required by section 422(b) (5) and (6) of the Act.

(4) Upon submission to the appropriate Regional Office, ACYF, of a jointly developed plan, the ITO must promptly notify the title IV–B agency of the State(s) in which the tribe is located of the submission.

(e) *Coordination of services.* (1) In meeting the requirements of section 422(b)(2) of the Act, the ITO's plan must assure coordination of services with other Federal, State or tribal programs to ensure maximum availability and utilization of resources that promote and enhance the welfare of children, youth and families served under title IV–B.

(2) For purposes of coordination, the ITO must provide a copy of its plan to the State(s) upon request. The ITO must also make its title IV–B plan and plan amendments available for public review and inspection.

(f) *Requirements for eligibility for additional payments.* (1) For any fiscal year after FY 1979 in which a sum in excess of $141,000,000 is appropriate under section 420 of the Act, an ITO is not eligible for payment of an amount greater than the amount for which it would be eligible if the appropriation were equal to $141,000,000 unless the Indian Tribe/ITO has implemented the requirements applicable to the State/State agency in section 427(a) of the Act.

(2) If, for each of any two consecutive fiscal years after fiscal year 1979, there is appropriated under section 420 of the Act a sum equal to or greater than $266,000,000, a Tribe's allotment amount for any fiscal year after those two consecutive fiscal years must be reduced to an amount equal to what the allotment amount would have been for fiscal year 1979 unless the Indian Tribe/ITO has implemented the requirements applicable to the State/State agency in section 427(b) of the Act.

(3) The provisions applicable to the State/State agency in 45 CFR 1357.25 (d) and (e) apply to the Indian tribe/ITO.

(g) *Grants: General.* (1) Grants may be made to eligible Indian Tribal Organizations in a State which has a jointly developed Child Welfare Services Plan under title IV–B of the Act.

(2) Federal funds made available for a direct grant to an eligible ITO shall be paid by the Department, from the title IV–B allotment for the State in which the ITO is located. Should a direct grant be approved, the Department shall promptly notify the State(s) affected.

(3) If an eligible ITO includes population from more than one State, a proportionate amount of the grant will be paid from each State's allotment.

(4) The receipt of title IV–B funds must be in addition to and not a substitute for funds otherwise previously expended by the ITO for child welfare services.

(5) The Indian Tribe/ITO must adhere to the requirements applicable to the State/State agency in 45 CFR 1357.30, Fiscal Requirements (title IV–B).

(6) In order to determine the amount of Federal funds available for a direct grant to an eligible ITO, the Department shall first divide the State's title IV–B allotment by the number of children in the State, then multiply the resulting amount by a multiplication factor determined by the Secretary, and then multiply that amount by the number of Indian children in the ITO population. The multiplication factor will be set at a level designed to

achieve the purposes of the Act and revised as appropriate.

[48 FR 23118, May 23, 1983, as amended at 60 FR 28737, June 2, 1995]

SUBCHAPTER H—FAMILY VIOLENCE PREVENTION AND SERVICES PROGRAMS

PART 1370—FAMILY VIOLENCE PREVENTION AND SERVICES PROGRAMS

Sec.

AUTHORITY: 42 U.S.C. 10401 *et seq.*

SOURCE: 61 FR 6793, Feb. 22, 1996, unless otherwise noted.

§ 1370.1 Purpose.

This part addresses sections 303, 308, 311, and 314 of the Family Violence Prevention and Services Act (the Act), as amended (42 U.S.C. 10401 et seq.). The Act authorizes the Secretary to implement programs for the purposes of increasing public awareness about and preventing family violence; providing immediate shelter and related assistance for victims of family violence and their dependents; and providing for technical assistance and training relating to family violence programs to States, tribes, local public agencies (including law enforcement agencies, courts, legal, social service, and health care professionals), non-profit private organizations and other persons seeking such assistance. All programs authorized under the Act are funded subject to the availability of funds.

§ 1370.2 State and Indian tribal grants.

Each grantee awarded funds under section 303 of the Act must meet the statutory requirements of the Act and all applicable regulations. An announcement which describes the application process, including information on statutory requirements, other applicable regulations, and any required financial and program reports, is published in the FEDERAL REGISTER.

§ 1370.3 Information and technical assistance center grants.

Each grantee awarded funds under section 308 of the Act must meet the statutory requirements of the Act and all applicable regulations. An announcement which describes the application process, including information on statutory requirements, other applicable regulations, and any required financial and program reports, is published in the FEDERAL REGISTER.

§ 1370.4 State domestic violence coalition grants.

Each grantee awarded funds under section 311 of the Act must meet the statutory requirements of the Act and all applicable regulations. An announcement which describes the application process, including information on statutory requirements, other applicable regulations, and any required financial and program reports, is published in the FEDERAL REGISTER.

§ 1370.5 Public information campaign grants.

Each grantee awarded funds under section 314 of the Act must meet the statutory requirements of the Act and all applicable regulations. An announcement which describes the application process, including information on statutory requirements, other applicable regulations, and any required financial and program reports, is published in the FEDERAL REGISTER.

SUBCHAPTER I—THE ADMINISTRATION ON DEVELOPMENTAL DISABILITIES, DEVELOPMENTAL DISABILITIES PROGRAM

PART 1385—REQUIREMENTS APPLICABLE TO THE DEVELOPMENTAL DISABILITIES PROGRAM

Sec.

AUTHORITY: 42 U.S.C. 6000 et. seq.

SOURCE: 49 FR 11777, Mar. 27, 1984, unless otherwise noted.

§1385.1 General.

Except as specified in §1385.4, the requirements in this part are applicable to the following programs and projects:

(a) Federal Assistance to State Developmental Disabilities Councils;

(b) Protection and Advocacy of the Rights of Individuals with Developmental Disabilities;

(c)Projects of National Significance;and

(d) University Affiliated Programs (UAPs).

[52 FR 44845, Nov. 20, 1987, as amended at 54 FR 47984, Nov. 20, 1989; 61 FR 51153, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51153, Sept. 30, 1996, §1385.1 was amended by revising paragraphs (a) and (b), effective Oct. 30, 1996. For the convenience of the reader, the superseded text is set forth as follows:

§1385.1 General.

* * * * *

(a) State Systems for Protection and Advocacy of Individual Rights of Persons with Developmental Disabilities;

(b) State Basic Program for Planning Priority Area Activities for Persons with Developmental Disabilities.

* * * * *

§1385.2 Purpose of the regulations.

These regulations implement the Developmental Disabilities Assistance and Bill of Rights Act as amended (42 U.S.C. 6000, et seq.).

§1385.3 Definitions.

In addition to the definitions in section 102 of the Act (42 U.S.C. 6001), the following definitions apply:

ACF means the Administration for Children and Families within the Department of Health and Human Services.

Act means the Developmental Disabilities Assistance and Bill of Rights Act, as amended (42 U.S.C. 6000 et. seq).

ADD means the Administration on Developmental Disabilities, within the Administration for Children and Families.

Commissioner means the Commissioner of the Administration on Developmental Disabilities, Administration for Children and Families, Department of Health and Human Services or his or her designee.

Department means the U.S. Department of Health and Human Services (HHS).

Developmental disability shall have the same meaning in 45 CFR parts 1385, 1386, 1387, and 1388 as it does in the Developmental Disabilities Act, section 102(8), which reads ''the term 'developmental disability' means a severe, chronic disability of an individual 5 years of age or older that—

(1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(2) Is manifested before the individual attains age 22;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in three or more of the following areas of major life activity—

(i) Self-care;

(ii) Receptive and expressive language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction;

(vi) Capacity for independent living; and

(vii) Economic self-sufficiency.

(5) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, supports, or other assistance that is of lifelong or extended duration and is individually planned and coordinated, except that such term, when applied to infants and young children means individual from birth to age 5, inclusive, who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.'' Such determination shall be made on a case-by-case basis and any State eligibility definition of developmental disability or policy statement which is more restrictive than that of the Act does not apply as the Act takes precedence.

Fiscal year means the Federal fiscal year unless otherwise specified.

Governor means the chief executive officer of the State or Territory, or his or her designee who has been formally designated to act for the Governor in carrying out the requirements of the Act and these regulations.

OHDS means the Office of Human Developmental Services within the Department of Health and Human Services.

Protection and Advocacy Agency means the organization or agency designated in a State to administer and operate a protection and advocacy (P&A) system for individuals with developmental disabilities under part C of the Developmental Disabilities Assistance and Bill of Rights Act, as amended (A P&A System under part C is authorized to investigate incidents of abuse and neglect regarding persons with developmental disabilities; pursue administrative, legal and appropriate remedies or approaches to ensure protection of, and advocacy for, the rights of such individuals; and provide information on and referral to programs and services addressing the needs of such individuals (section 142(a)(2)(A).); and advocacy programs under the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (PAIMI Act), as amended, (42 U.S.C. 10801 *et seq.*) the Protection and Advocacy of Individual Rights Program (PAIR), (29 U.S.C. 794(e); and the Technology-Related Assistance for Individuals With Disabilities Act of 1988, as amended (29 U.S.C. 2212(e)). The Protection and Advocacy agency also may be designated by the Governor of a State to conduct the Client Assistance Program (CAP) authorized by section 112 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 732). Finally, the Protection and Advocacy agency may provide advocacy services under other Federal programs.

Secretary means the Secretary of the Department of Health and Human Services.

[49 FR 11777, Mar. 27, 1984, as amended at 52 FR 44845, Nov. 20, 1987; 54 FR 47984, Nov. 20, 1989; 61 FR 51153, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51153, Sept. 30, 1996, §1385.3 was amended by revising the definitions of *ADD* and *Commissioner* and by alphabetically adding definitions for *ACF, Developmental disability,* and *Protection and Advocacy Agency,* effective Oct. 30, 1996. For the convenience of the reader, the superseded text is set forth as follows:

§ 1385.3 Definitions.

* * * * *

ADD means the Administration on Developmental Disabilities, within the Office of Human Development Services.

Commissioner means the Commissioner of the Administration on Development Disabilities, Office of Human Development Services, Department of Health and Human Services or his or her designee.

* * * * *

§ 1385.4 Rights of individuals with developmental disabilities.

(a) Section 110 of the Act, Rights of Individuals with Developmental Disabilities (42 U.S.C. 6009) is applicable to the programs authorized under the Act, except for the Protection and Advocacy System.

(b) In order to comply with section 122(c)(5)(G) of the Act (42 U.S.C. 6022(c)(5)(G)), regarding the rights of individuals with developmental disabilities, the State must meet the requirements of 45 CFR 1386.30(f)(2).

(c) Applications from university affiliated programs or for projects of national significance grants must also

contain an assurance that the human rights of individuals assisted by these programs will be protected consistent with section 110 (see section 153(c)(3) and section 162(c)(3) of the Act).

[61 FR 51154, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51154, Sept. 30, 1996, §1385.4 was revised, effective Oct. 30, 1996. For the convenience of the reader, the superseded text is set forth as follows:

§1385.4 Rights of persons with developmental disabilities.

(a) Section 110 of the Act, *Rights of the Developmentally Disabled* (42 U.S.C. 6009) is applicable to the programs authorized under the Act, except for the Protection and Advocacy system.

(b) In order to comply with section 122(b)(6)(C) of the Act (42 U.S.C. 6022(b)(6)(C)), regarding the rights of developmentally disabled persons, the State must meet the requirements of §1386.30(e)(3) of these regulations.

(c) Applications from university affiliated programs or for projects of

§1385.5 Recovery of Federal funds used for construction of facilities.

(a) The State Council or the appropriate university affiliated facility official must notify the Commissioner in advance in writing if a facility described in section 105 of the act:

(1) Will be sold or transferred to any person, agency, or organization which is not a public or nonprofit private entity: or

(2) Will cease to be a public or other nonprofit facility for persons with developmental disabilities.

(b) The State Council or the appropriate UAP official must submit detailed documentation to the Commissioner of all transactions as specified in paragraph (a) of this section which occurred prior to this publication.

(c) Recovery of funds will include the charging of interest in accordance with HHS claims collection regulations in 45 CFR part 30 and the Departmental Debt Collection Procedures (45 FR 61792, September 17, 1980) available from the Administration on Developmental Disabilities, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

[52 FR 44846, Nov. 20, 1987, as amended at 54 FR 47984, Nov. 20, 1989]

EFFECTIVE DATE NOTE: At 61 FR 51154, Sept. 30, 1996, §1385.5 was removed and reserved, effective Oct. 30, 1996.

§1385.6 Employment of individuals with disabilities.

Each grantee which receives Federal funding under the Act must meet the requirements of section 109 of the Act (42 U.S.C. 6008) regarding affirmative action. The grantee must take affirmative action to employ and advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as the following: Advertising, recruitment, employment, rates of pay or other forms of compensation, selection for training, including apprenticeship, upgrading, demotion or transfer, and layoff or termination. This obligation is in addition to the requirements of 45 CFR part 84, subpart B, prohibiting discrimination in employment practices on the basis of disability in programs receiving assistance from the Department. Recipients of funds under the Act also may be bound by the provisions of the Americans with Disabilities Act (Pub. L. 101–336, 42 U.S.C. 12101 *et seq.*) with respect to employment of individuals with disabilities. Failure to comply with section 109 of the Act may result in loss of Federal funds under the Act. If a compliance action is taken, the State will be given reasonable notice and an opportunity for a hearing as provided in Subpart D of 45 CFR part 1386.

[61 FR 51154, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51154, Sept. 30, 1996, §1385.6 was revised, effective Oct. 30, 1996. For the convenience of the reader, the superseded text is set forth as follows:

§1385.6 Employment of handicapped individuals.

Each grantee who receives Federal funding under the Act must meet the requirements of section 109 of the Act (42 U.S.C. 6008) regarding affirmative action. Failure to comply with section 109 may result in loss of Federal funds under the Act. If a compliance action is taken, the State will be given reasonable notice and an opportunity for a hearing as provided in subpart D of part 1386.

§ 1385.7 Waivers.

Applications for a waiver of the provisions of sections 105 of the Act (42 U.S.C. 6004) with respect to alternative use of facilities constructed with funds under the Act may be granted by the Commissioner if the following criteria are met:

(a) The waiver request provides a basis for alternative use or sale of a facility constructed with funds appropriated under the Act.

(b) The clients served in the facility are or will be served in a facility of equal or higher quality.

(c) If the waiver request is for an alternate use, that use must serve some other public purpose.

[49 FR 11777, Mar. 27, 1984, as amended at 52 FR 44846, Nov. 20, 1987]

EFFECTIVE DATE NOTE: At 61 FR 51154, Sept. 30, 1996, §1385.7 was removed and reserved, effective Oct. 30, 1996.

§ 1385.8 Formula for determining allotments.

The Commissioner will allocate funds appropriated under the Act for the State Developmental Disabilities Councils and the Protection and Advocacy Systems on the following basis:

(a) Two-thirds of the amount appropriated are allotted to each State according to the ratio the population of each State bears to the population of the United States. This ratio is weighted by the relative per capita income for each State. The data used to compute allotments are supplied by the U.S. Department of Commerce, for the three most recent consecutive years for which satisfactory data are available.

(b) One-third of the amount appropriated is allotted to each State on the basis of the relative need for services of persons with developmental disabilities. The relative need is determined by the number of persons receiving benefits under the Childhood Disabilities Beneficiary Program (section 202(d)(1)(B)(ii) of the Social Security Act), (42 U.S.C. 402(d)(1)(B)(ii)).

[49 FR 11777, Mar. 27, 1984, as amended at 61 FR 51154, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51154, Sept. 30, 1996, §1385.8 was amended by revising the introductory text, effective Oct. 30, 1996. For the convenience of the reader, the superseded text is set forth as follows:

§ 1385.8 Formula for determining allotments.

The Commissioner will allocate funds appropriated under the Act for the purpose of the basic State program (see subpart C—State Plan for Provision of Services for Persons with Developmental Disabilities) and the protection and advocacy system (see subpart B—State System for Protection and Advocacy of Individual Rights) on the following basis:

* * * * *

§ 1385.9 Grants administration requirements.

(a) The following parts of title 45 CFR apply to grants funded under parts 1386 and 1388 of this chapter and to grants for Projects of National Significance under section 162 of the Act (42 U.S.C. 6082).

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board.
45 CFR Part 46—Protection of Human Subjects.
45 CFR Part 74—Administration of Grants.
45 CFR Part 75—Informal Grant Appeals Procedures.
45 CFR Part 80—Nondiscrimination under Programs Receiving Federal Assistance Through the Department of Health and Human Services—Effectuation of title VI of the Civil Rights Act of 1964.
45 CFR Part 81—Practice and Procedure for Hearings Act under part 80 of this title.
45 CFR Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.
45 CFR Part 86—Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance.
45 CFR Part 91—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS.
45 CFR Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(b) The Departmental Appeals Board also has jurisdiction over appeals by grantees which have received grants

under the University Affiliated program or for Projects of National Significance. The scope of the Board's jurisdiction concerning these appeals is described in 45 CFR part 16.

(c) The Departmental Appeals Board also has jurisdiction to decide appeals brought by the States concerning any disallowances taken by the Commissioner with respect to specific expenditures incurred by the States or by contractors or subgrantees of States. This jurisdiction relates to funds provided under the two formula programs—Part B of the Act—Federal Assistance to State Developmental Disabilities Councils and Part C of the Act—Protection and Advocacy of the Rights of Individuals with Developmental Disabilities. Appeals filed by States shall be decided in accordance with 45 CFR part 16.

(d) In making audits and examinations to any books, documents, papers, and transcripts of records of State Developmental Disabilities Councils, the University Affiliated Programs, and the Projects of National Significance grantees and subgrantees, as provided for in 45 CFR part 74 and part 92, the Department will keep information about individual clients confidential to the maximum extent permitted by law and regulations.

(e) (1) The Department or other authorized Federal officials may access client and case eligibility records or other records of the Protection and Advocacy system for audit purposes and for purposes of monitoring system compliance pursuant to section 104(b) of the Act. However, such information will be limited pursuant to section 142(j) of the Act. No personal identifying information such as name, address, and social security number will be obtained. Only eligibility information will be obtained regarding type and level of disability of individuals being served by the P&A and the nature of the issue concerning which the System represented an individual.

(2) Notwithstanding paragraph (e)(1)of this section, if an audit, monitoring review, evaluation, or other investigation by the Department produces evidence that the system has violated the Act or the regulations, the system will bear the burden of proving its compliance. The system's inability to establish compliance because of the confidentiality of records will not relieve it of this responsibility. The system may elect to obtain a release from all individuals requesting or receiving services at the time of intake or application. The release shall state only information directly related to client and case eligibility will be subject to disclosure to officials of the Department.

[49 FR 11777, Mar. 27, 1984, as amended at 52 FR 44846, Nov. 20, 1987; 54 FR 47984, Nov. 20, 1989; 61 FR 51154, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51154, Sept. 30, 1996, §1385.9 was amended by revising the first sentence of paragraph (a); revising paragraphs (b), (c), and (d) and adding a new paragraph (e), effective Oct. 30, 1996. For the convenience of the reader, the superseded text is set forth as follows:

§ 1385.9 Grants administration requirements.

(a) The following parts of title 45 CFR apply to grants funded under Parts 1386 and 1388 of this chapter and to special project grants under section 162 of the Act (42 U.S.C. 6082).

* * * * *

(b) The Departmental Grant Appeals Board also has jurisdiction over appeals by grantees who have received grants under the University Affiliated program or for a Special Project.

The scope of the Board's jurisdiction concerning these appeals is described in 45 CFR part 16.

(c) The Departmental Grant Appeals also has jurisdiction to decide appeals brought by the States concerning any disallowances taken by the Commissioner with respect to specific expenditures incurred by States or by contractors or subgrantees of States. This jurisdiction relates to funds provided under the two formula grant programs—the Basic State Grant program and the State Protection and Advocacy system. Appeals filed by States shall be decided in accordance with 45 CFR part 16.

(d) In making audits, examinations, excerpts and transcripts of records of grantees and subgrantees, including the protection and advocacy system, as provided for in 45 CFR part 74, the Department will keep information about individual clients confidential to the extent permitted by law and regulations.

PART 1386—FORMULA GRANT PROGRAMS

Subpart A—Basic requirements

Subpart B—State System for Protection and Advocacy of the Rights of Individuals with Developmental Disabilities.

Subpart C—Federal Assistance to State Developmental Disabilities Councils.

Subpart D—Practice and Procedure for Hearing Pertaining to States' Conformity and Compliance with Developmental Disabilities State Plans, Reports and Federal Requirements

AUTHORITY: 42 U.S.C. 6000 et. seq.

SOURCE: 49 FR 11779, Mar. 27, 1984, unless otherwise noted.

Subpart A—Basic Requirements

§ 1386.1 General.

All rules under this subpart are applicable to both the State Developmental Disabilities Councils and the Protection and Advocacy Agencies.

[49 FR 11779, Mar. 27, 1984, as amended at 61 FR 51155, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51155, Sept. 30, 1996, §1386.1 was revised, effective Oct. 30, 1996. For the convenience of the reader, the superseded text is set forth as follows:

§ 1386.1 General.

All rules under this subpart are applicable to both the Protection and Advocacy System and State Basic Support Program.

§ 1386.2 Obligation of funds.

(a) Funds which the Federal Government allots under this Part during a Federal fiscal year are available for obligation by States for a two year period beginning with the first day of the Federal fiscal year in which the grant is awarded.

(b) (1) A State incurs an obligation for acquisition of personal property or for the performance of work on the date it makes a binding, legally enforceable, written commitment, or when the State Developmental Disabilities Council enters into an Interagency Agreement with an agency of State government for acquisition of

personal property or for the performance of work.

(2) A State incurs an obligation for personal services, for services performed by public utilities, for travel or for rental of real or personal property on the date it receives the services, its personnel takes the travel, or it uses the rented property.

(c) (1) The Protection and Advocacy System may elect to treat entry of an appearance in judicial and administrative proceedings on behalf of an individual with a developmental disability as a basis for obligating funds for the litigation costs. The amount of the funds obligated must not exceed a reasonable estimate of the costs, and the way the estimate was calculated must be documented.

(2) For the purpose of this paragraph, *litigation costs* mean expenses for court costs, depositions, expert witness fees, travel in connection with a case and similar costs and costs resulting from litigation in which the agency has represented an individual with developmental disabilities (e.g. monitoring court orders, consent decrees), but not for salaries of employees of the Protection and Advocacy agency. All funds made available for Federal Assistance to State Developmental Disabilities Councils and to the Protection and Advocacy System obligated under this paragraph are subject to the requirement of paragraph (a) of this section. These funds, if reobligated, may be reobligated only within a two year period beginning with the first day of the Federal fiscal year in which the funds were originally awarded.

[49 FR 11779, Mar. 27, 1984, as amended at 54 FR 47985, Nov. 20, 1989; 61 FR 51155, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51155, Sept. 30, 1996, §1386.2 was amended by revising paragraphs (b)(1) and (c), effective Oct. 30, 1996. For the convenience of the reader, the superseded text is set forth as follows:

§1386.2 Obligation of funds.

* * * * *

(b)(1) A State incurs an obligation for acquisition of personal property or for the performance of work on the date it makes a binding, legally enforceable, written commitment.

* * * * *

(c)(1) Protection and Advocacy offices may elect to treat entry of an appearance in judicial and administrative proceedings on behalf of a person with developmental disabilities as a basis for obligating funds for the litigation costs. The amount of the funds obligated must not exceed a reasonable estimate of the costs, and the way the estimate was calculated must be documented.

(2) For the purpose of this paragraph, litigation costs mean expenses for court costs, depositions, expert witness fees, travel in connection with a case and similar costs and costs resulting from litigation in which the agency has represented a developmentally disabled person (e.g. monitoring court orders, consent decrees), but not for salaries of employees of the Protection and Advocacy system. All funds made available to the State Basic Support Program and to the P&A System obligated under this paragraph are subject to the requirement of paragraph (a) of this section. These funds, if reobligated, may be reobligated only within the same fiscal year in which the funds were originally obligated.

§1386.3 Liquidation of obligations.

(a) All obligations incurred pursuant to a grant made under the Act for a specific Federal fiscal year, must be liquidated within two years of the close of the Federal fiscal year in which the grant was awarded.

(b) The Commissioner may waive the requirements in paragraph (a) of this section when State law impedes implementation or the amount of obligated funds to be liquidated is in dispute.

(c) Funds attributable to obligations which are not liquidated in accordance with the provisions of this section revert to the Federal Government.

§1386.4 Eligibility for services.

(a) All persons who meet all of the criteria of the definition of developmental disability set forth in section 102 of the Act (42 U.S.C. 6001) are eligible for available and appropriate services.

(b) In addition, a person who met the definition of developmental disability as provided in Pub. L. 94–103 and who was actually receiving one or more services under the Act during the period October 1, 1968 through November

30, 1978, is eligible to continue to receive services, provided that person's Individual Habilitation Plan (IHP) indicates a continuing need for services.

[49 FR 11779, Mar. 27, 1984, as amended at 49 FR 18098, Apr. 27, 1984]

EFFECTIVE DATE NOTE: At 61 FR 51155, Sept. 30, 1996, §1386.4 was removed and reserved, effective Oct. 30, 1996.

Subpart B—State System for Protection and Advocacy of the Rights of Individuals with Developmental Disabilities

§ 1386.19 Definitions.

As used in §§1386.20, 1386.21, 1386.22 and 1386.25 of this part the following definitions apply:

Abuse means any act or failure to act which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an individual with developmental disabilities, and includes such acts as: Verbal, nonverbal, mental and emotional harassment; rape or sexual assault; striking; the use of excessive force when placing such an individual in bodily restraints; the use of bodily or chemical restraints which is not in compliance with Federal and State laws and regulations or any other practice which is likely to cause immediate physical or psychological harm or result in long term harm if such practices continue.

Complaint includes, but is not limited to any report or communication, whether formal or informal, written or oral, received by the system including media accounts, newspaper articles, telephone calls (including anonymous calls), from any source alleging abuse or neglect of an individual with a developmental disability.

Designating Official means the Governor or other State official, who is empowered by the Governor or State legislature to designate the State official or public or private agency to be accountable for the proper use of funds by and conduct of the State Protection and Advocacy agency.

Facility includes any setting that provides care, treatment, services and habilitation, even if only ''as needed'' or under a contractual arrangement. Facilities include, but are not limited to the following:

Community living arrangements (e.g., group homes, board and care homes, individual residences and apartments), day programs, juvenile detention centers, hospitals, nursing homes, homeless shelters, jails and prisons.

Full Investigation means access to facilities, clients and records authorized under these regulations, that is necessary for a protection and advocacy (P&A) system to make a determination about whether alleged or suspected instances of abuse and neglect are taking place or have taken place. Full investigations may be conducted independently or in cooperation with other agencies authorized to conduct similar investigations.

Legal Guardian, conservator and legal representative all mean an individual appointed and regularly reviewed by a State court or agency empowered under State law to appoint and review such officers and having authority to make all decisions on behalf of individuals with developmental disabilities. It does not include persons acting only as a representative payee, person acting only to handle financial payments, attorneys or other persons acting on behalf of an individual with developmental disabilities only in individual legal matters, or officials responsible for the provision of treatment or habilitation services to an individual with developmental disabilities or their designees.

Neglect means a negligent act or omission by an individual responsible for providing treatment or habilitation services which caused or may have caused injury or death to an individual with developmental disabilities or which placed an individual with developmental disabilities at risk of injury or death, and includes acts or omissions such as failure to: establish or carry out an appropriate individual program plan or treatment plan (including a discharge plan); provide adequate nutrition, clothing, or health care to an individual with developmental disabilities; provide a safe environment which also includes failure to maintain adequate numbers of trained staff.

Probable cause means a reasonable ground for belief that an individual with developmental disabilities has been, or may be, subject to abuse or neglect. The individual making such determination may base the decision on reasonable inferences drawn from his or her experience or training regarding similar incidents, conditions or problems that are usually associated with abuse or neglect.

[61 FR 51155, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51155, Sept. 30, 1996, §1386.19 was added, effective Oct. 30, 1996.

§ 1386.20 Designated State Protection and Advocacy agency.

(a) The designating official must designate the State official or public or private agency to be accountable for proper use of funds and conduct of the Protection and Advocacy agency.

(b) An agency of the State or private agency providing direct services, including guardianship services may not be designated as a Protection and Advocacy agency.

(c) In the event that an entity outside of the State government is designated to carry out the program, the designating official or entity must assign a responsible State official to receive, on behalf of the State, notices of disallowances and compliance actions as the State is accountable for the proper and appropriate expenditure of Federal funds.

(d) (1) Prior to any redesignation of the agency which administers and operates the State Protection and Advocacy (P&A) System, the designating official must give written notice of the intention to make the redesignation to the agency currently administering and operating the State Protection and Advocacy System by registered or certified mail. The notice must indicate that the proposed redesignation is being made for good cause. The designating official must also publish a public notice of the proposed action. The agency and the public shall have a reasonable period of time, but not less than 45 days to respond to the notice.

(2) The public notice must include:

(i) The Federal requirements for the Protection and Advocacy system for individuals with developmental disabilities (section 142 of the Act); and, where applicable, the requirements of other Federal advocacy programs administered by the State Protection and Advocacy System.

(ii) The goals and function of the State's Protection and Advocacy System including the current Statement of Objectives and Priorities;

(iii) The name and address of the agency currently designated to administer and operate the Protection and Advocacy system; and an indication of whether the agency also operates other Federal advocacy programs;

(iv) A description of the current Protection and Advocacy agency and the system it administers and operates including, as applicable, descriptions of other Federal advocacy programs it operates;

(v) A clear and detailed explanation of the good cause for the proposed redesignation;

(vi) A statement suggesting that interested persons may wish to write the current State Protection and Advocacy agency at the address provided in paragraph (d)(2)(iii) of this section to obtain a copy of its response to the notice required by paragraph (d)(1)of this section. Copies shall be provided in accessible formats to individuals with disabilities upon request;

(vii) The name of the new agency proposed to administer and operate the Protection and Advocacy System under the Developmental Disabilities program. This agency will be eligible to administer other Federal advocacy programs;

(viii) A description of the system which the new agency would administer and operate, including a description of all other Federal advocacy programs the agency would operate;

(ix) The timetable for assumption of operations by the new agency and the estimated costs of any transfer and start-up operations; and

(x) A statement of assurance that the proposed new designated State P&A System will continue to serve existing clients and cases of the current P&A system or refer them to other sources of legal advocacy as appropriate, without disruption.

(3) The public notice as required by paragraph (d)(1) of this section, must

be in a format accessible to individuals with developmental disabilities or their representatives, e.g., tape, diskette. The designating official must provide for publication of the notice of the proposed redesignation using the State register, State-wide newspapers, public service announcements on radio and television, or any other legally equivalent process. Copies of the notice must be made generally available to individuals with developmental disabilities and mental illness who live in residential facilities through posting or some other means.

(4) After the expiration of the public comment period required in paragraph (d)(1) of this section, the designating official must conduct a public hearing on the redesignation proposal. After consideration of all public and agency comments, the designating official must give notice of the final decision to the currently designated agency and the public through the same means used under paragraph (d)(3) of this section. This notice must include a clear and detailed explanation of the good cause finding. If the notice to the currently designated agency states that the redesignation will take place, it also must inform the agency of its right to appeal this decision to the Assistant Secretary, Administration for Children and Families and provide a summary of the public comments received in regard to the notice of intent to redesignate and the results of the public hearing and its responses to those comments. The redesignation shall not be effective until 10 working days after notifying the current Protection and Advocacy agency or, if the agency appeals, until the Assistant Secretary has considered the appeal.

(e) (1) Following notification pursuant to paragraph (d)(4) of this section, the Protection and Advocacy agency which is the subject of such action, may appeal the redesignation to the Assistant Secretary. To do so, the Protection and Advocacy agency must submit an appeal in writing to the Assistant Secretary within 20 days of receiving official notification under paragraph (d)(4) of this section, with a separate copy sent by registered or certified mail to the designating official who made the decision concerning redesignation.

(2) In the event that the agency subject to redesignation does exercise its right to appeal under paragraph (e)(1) of this section, the designating official must give public notice of the Assistant Secretary's final decision regarding the appeal through the same means utilized under paragraph (d)(3) of this section within 10 working days of receipt of the Assistant Secretary's final decision under paragraph (e)(6) of this section.

(3) The designating official within 10 working days from the receipt of a copy of the appeal must provide written comments to the Assistant Secretary (with a copy sent by registered or certified mail to the Protection and Advocacy agency appealing under paragraph (e)(1) of this section), or withdraw the redesignation. The comments must include a summary of the public comments received in regard to the notice of intent to redesignate and the results of the public hearing and its responses to those comments.

(4) In the event that the designating official withdraws the redesignation while under appeal pursuant to paragraph (e)(1) of this section, the designating official must notify the Assistant Secretary, and the current agency, and must give public notice of his or her decision through the same means utilized under paragraph (d)(3) of this section.

(5) As part of their submission under paragraph (e)(1) or (e)(3) of this section, either party may request, and the Assistant Secretary may grant, an opportunity for an informal meeting with the Assistant Secretary at which representatives of both parties will present their views on the issues in the appeal. The meeting will be held within 20 working days of the submission of written comments by the designating official under paragraph (e)(2) of this section. The Assistant Secretary will promptly notify the parties of the date and place of the meeting.

(6) Within 30 days of the informal meeting under paragraph (e)(5) of this section, or, if there is no informal meeting under paragraph (e)(5) of this

section, within 30 days of the submission under paragraph (e)(3) of this section, the Assistant Secretary will issue to the parties a final written decision on whether the redesignation was for good cause as defined in paragraph (d)(1) of this section. The Assistant Secretary will consult with Federal advocacy programs that will be directly affected by the proposed redesignation in making a final decision on the appeal.

(f) (1) Within 30 days after the redesignation becomes effective under paragraph (d)(4) of this section, the designating official must submit an assurance to the Assistant Secretary that the newly designated Protection and Advocacy agency meets the requirements of the statute and the regulations.

(2) In the event that the Protection and Advocacy agency subject to redesignation does not exercise its rights to appeal within the period provided under paragraph (e)(1) of this section, the designating official must provide to the Assistant Secretary documentation that the agency was redesignated for good cause. Such documentation must clearly demonstrate that the Protection and Advocacy agency subject to redesignation was not redesignated for any actions or activities which were carried out under section 142 of the Act, these regulations or any other Federal advocacy program's legislation or regulations.

[49 FR 11779, Mar. 27, 1984, as amended at 52 FR 44846, Nov. 20, 1987; 61 FR 51156, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51156, Sept. 30, 1996, §1386.20 was amended by revising the heading; revising paragraphs (a), (d), and (e); and adding a new paragraph (f), effective Oct. 30, 1996. For the convenience of the reader, the superseded text is set forth as follows:

§ 1386.20 Designated State Protection and Advocacy Office.

(a) The Governor or other State official or entity so empowered must designate the State official or public or private agency to be accountable for the proper use of funds and conduct of the State Protection and Advocacy system.

* * * * *

(d) Prior to any redesignation of the agency which administers the State Protection and Advocacy system, the Governor or a State official empowered by the Governor or State legislature must give public notice of the intent to redesignate and provide an opportunity for public comment on the proposed redesignation. The public notice must include:

(1) The Federal requirements for the Protection and Advocacy program (section 142 of the Act);

(2) The goals and function of the State's Protection and Advocacy program;

(3) Name of current designated agency;

(4) A description of the current Protection and advocacy agency and the system it administers;

(5) The reason(s) for proposing redesignation;

(6) Effective date of proposed redesignation;

(7) The name of the agency proposed to administer the State Protection and Advocacy program; and

(8) A description of the system which the new Protection and Advocacy agency would administer.

(e) Following receipt of comments from the public, the Governor or a State official empowered by the Governor or State legislature must submit the following information to the Commissioner:

(1) Documentation that the system was redesignated for good cause; Such documentation must clearly demonstrate that the existing Protection and Advocacy agency was not redesignated for any actions or activities undertaken which were consistent with section 142 of the Act, these regulations and the Protection and Advocacy for Mentally Ill Individuals Act of 1986, Pub. L. 99–319.

(2) Assurance that the designated Protection and Advocacy system meets the requirements of the statute and the regulations.

§ 1386.21 Requirements and authority of the Protection and Advocacy System.

(a) In order for a State to receive Federal financial participation for Protection and Advocacy activities under this subpart, as well as the State Developmental Disabilities Council activities (subpart C of this part), the Protection and Advocacy System must meet the requirements of section 142 of the Act (42 U.S.C. 6042) and that system must be operational.

(b) Allotments must be used to supplement and not to supplant the level of non-federal funds available in the State for activities under the Act, which shall include activities on behalf

of individuals with developmental disabilities to remedy abuse, neglect and violations of rights as well and information and referral activities.

(c) A Protection and Advocacy System shall not implement a policy or practice restricting the remedies which may be sought on the behalf of individuals with developmental disabilities or compromising the authority of the Protection and Advocacy System (P&A) to pursue such remedies through litigation, legal action or other forms of advocacy. However, the above requirement does not prevent the P&A from developing case or client acceptance criteria as part of the annual priorities identified by the P&A system as described in §1386.23(c) of this part. Clients must be informed at the time they apply for services of such criteria.

(d) A P&A system shall be free from hiring freezes, reductions in force, prohibitions on staff travel, or other policies, imposed by the State, to the extent that such policies would impact system program staff or functions funded with Federal funds and would prevent the system from carrying out its mandates under the Act.

(e) A Protection and Advocacy System shall have sufficient staff, qualified by training and experience, to carry out the responsibilities of the system in accordance with the priorities of the system and requirements of the Act, including the investigation of allegations of abuse, neglect and representations of individuals with developmental disabilities regarding rights violations.

(f) A Protection and Advocacy System may exercise its authority under State law where the authority exceeds the authority required by the Developmental Disabilities Assistance and Bill of Rights Act, as amended. However, State law must not diminish the required authority of the Protection and Advocacy System.

(g) Each P&A system that is a public system without a multimember governing or advisory board must establish an advisory council in order to provide a voice for individuals with developmental disabilities. The Advisory Council shall advise the P&A on program policies and priorities and shall be comprised of a majority of individuals with developmental disabilities who are eligible for services, or have received or are receiving services or parents or family members, (including those representing individuals with developmental disabilities who live in institutions and home and community based settings), guardians, advocates, or authorized representatives of such individuals.

(h) Prior to any Federal review of the State program, a 30 day notice and an opportunity for public comment must be provided. Reasonable effort shall be made by the appropriate Regional Office to seek comments through notification to major disability advocacy groups, the State Bar, other disability law resources, the State Developmental Disabilities Council and the University Affiliated Program, for example, through newsletters and publications of those organizations. The findings of public comments may be consolidated if sufficiently similar issues are raised and they shall be included in the report of the onsite visit.

(i) Before the P&A system releases information to individuals not otherwise authorized to receive it, the P&A must obtain written consent from the client requesting assistance, if competent, or his or her guardian.

[61 FR 51157, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51157, Sept. 30, 1996, §1386.21 was revised, effective Oct. 30, 1996. For the convenience of the reader, the superseded text is set forth as follows:

§ 1386.21 Requirements of the Protection and Advocacy System.

(a) In order for a State to receive Federal financial participation for Protection and Advocacy activities under this subpart, as well as the Basic Support Program (subject C), the Protection and Advocacy system must meet the requirements of section 142 of the Act (42 U.S.C. 6042) and that system must be operational.

(b) The client's record is the property of the Protection and Advocacy system which must protect it from loss, damage, tampering, or use by unauthorized individuals. The Protection and Advocacy system must:

(1) Keep confidential all information contained in a client's records including information contained in an automated data bank; this requirement in no way limits or restricts access by the Department or other authorized Federal officials to the client's records or other records of the protection

and advocacy system for purposes of carrying out the responsibilities of their offices. It also does not limit access by parents or legal guardians of minors unless prohibited by State law, court order or the rules of attorney-client privilege.

(2) Have written policies governing access to duplication of, and release of information from the client's record; and

(3) Obtain written consent from the client, if competent, or his or her guardian, before it releases information to individuals not otherwise authorized to receive it.

§ 1386.22 Access to records, facilities and individuals with developmental disabilities.

(a) Access to records—A protection and advocacy (P&A) system shall have access to the records of any of the following individuals with developmental disabilities:

(1) An individual who is a client of the system, including any person who has requested assistance from the system, if authorized by that individual or their legal guardian, conservator or other legal representative.

(2) An individual, including an individual who has died or whose whereabouts is unknown, to whom all of the following conditions apply:

(i) The individual, due to his or her mental or physical condition is unable to authorize the system to have access;

(ii) The individual does not have a legal guardian, conservator or other legal representative, or the individual's guardian is the State (or one of its political subdivisions); and

(iii) With respect to whom a complaint has been received by the system or the system has probable cause (which can be the result of monitoring or other activities including media reports and newspaper articles) to believe that such individual has been subject to abuse or neglect.

(3) An individual who has a legal guardian, conservator, or other legal representative, with respect to whom a complaint has been received by the system or with respect to whom the system has determined that there is probable cause to believe that the health or safety of the individual is in serious and immediate jeopardy, whenever all the following conditions exist:

(i) The system has made a good faith effort to contact the representative upon receipt of the representative's name and address;

(ii) The system has offered assistance to the representative to resolve the situation; and

(iii) The representative has failed or refused to act on behalf of the individual.

(b) Individual records to which P&A systems must have access under section 142(A)(2)(I) (whether written or in another medium, draft or final, including handwritten notes, electronic files, photographs or video or audio tape records) shall include, but shall not be limited to:

(1) Records prepared or received in the course of providing intake, assessment, evaluation, education, training and other supportive services, including medical records, financial records, and monitoring and other reports prepared or received by a member of the staff of a facility that is providing care or treatment;

(2) Reports prepared by an agency charged with investigating incidents of abuse or neglect, injury or death occurring at a facility or while the individual with a developmental disability is under the care of a member of the staff of a facility, or by or for such facility, that describe any or all of the following:

(i) Abuse, neglect, injury, death;

(ii) The steps taken to investigate the incidents;

(iii) Reports and records, including personnel records, prepared or maintained by the facility in connection with such reports of incidents; or,

(iv) Supporting information that was relied upon in creating a report, including all information and records which describe persons who were interviewed, physical and documentary evidence that was reviewed, and the related investigative findings; and

(3) Discharge planning records.

(c) Information in the possession of a facility which must be available to P&A systems in investigating instances of abuse and neglect under section 142(a)(2)(B) (whether written or in another medium, draft or final, including hand written notes, electronic files, photographs or video or audio tape records) shall include, but not be limited to:

(1) Information in reports prepared by individuals and entities performing certification or licensure reviews, or by professional accreditation organizations, as well as related assessments prepared for a facility by its staff, contractors or related entities, except that nothing in this section is intended to preempt State law protection records produced by medical care evaluation or peer review committees.

(2) Information in professional, performance, building or other safety standards, demographic and statistical information relating to a facility.

(d) A system shall be permitted to inspect and copy information and records, subject to a reasonable charge to offset duplicating costs.

(e) The client's record is the property of the Protection and Advocacy System which must protect it from loss, damage, tampering, or use by unauthorized individuals. The Protection and Advocacy System must:

(1) Keep confidential all information contained in a client's records, which includes, but is not limited to, information contained in an automated data bank. This regulation does not limit access by parents or legal guardians of minors unless prohibited by State or Federal law, court order or the rules of attorney-client privilege;

(2) Have written policies governing access to, storage of, duplication of, and release of information from the client's record; and

(3) Be authorized to keep confidential the names and identity of individuals who report incidents of abuse and neglect and individuls who furnish information that forms the basis for a determination that probable cause exists.

(f) Access to Facilities and Individuals with Developmental Disabilities—A system shall have reasonable unaccompanied access to public and private facilities which provide services, supports, and other assistance for individuals with developmental disabilities in the State when necessary to conduct a full investigation of an incident of abuse or neglect under section 142(a)(2)(B) of the Act. This authority shall include the opportunity: to interview any facility service recipient, employee, or other person, including the person thought to be the victim of such abuse, who might be reasonably believed by the system to have knowledge of the incident under investigation; and to inspect, view and photograph all areas of the facility's premises that might be reasonably believed by the system to have been connected with the incident under investigation.

(g) Under section 142(a)(2)(H) of the Act, the system and all of its authorized agents shall have unaccompanied access to all residents of a facility at reasonable times, which at a minimum shall include normal working hours and visiting hours, for the purpose of:

(1) Providing information and training on, and referral to, programs addressing the needs of individuals with developmental disabilities, and the protection and advocacy services available from the system, including the name, address, and telephone number of the system and other information and training about individual rights; and

(2) Monitoring compliance with respect to the rights and safety of service recipients.

(h) Unaccompanied access to residents of a facility shall include the opportunity to meet and communicate privately with such individuals regularly, both formally and informally, by telephone, mail and in person.

(i) If a system is denied access to facilities and its programs, individuals with developmental disabilities, or records covered by the Act it shall be provided promptly with a written statement of reasons, including, in the case of a denial for alleged lack of authorization, the name and address of the legal guardian, conservator, or other legal representative of an individual with developmental disabilities.

[61 FR 51158, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51158, Sept. 30, 1996, §1386.22 was added, effective Oct. 30, 1996.

§ 1386.23 Periodic reports: Protection and Advocacy System.

(a) By January 1 of each year the Protection and Advocacy System shall submit an Annual Program Performance Report as required in section 107(b) of the Act, in a format designated by the Secretary.

(b) Financial status reports must be submitted by the Protection and Advocacy Agency according to a frequency interval specified by the Administration for Children and Families. In no case will such reports be required more frequently than quarterly.

(c) By January 1 of each year, the Protection and Advocacy System shall submit an Annual Statement of Objectives and Priorities, (SOP) for the coming fiscal year as required under section 142(a)(2)(C) of the Act.

(1) The SOP is a description and explanation of the priorities and selection criteria for the system's individual advocacy caseload; systemic advocacy work and training activities, and the outcomes which it strives to accomplish.

(2) Where applicable, the SOP must include a description of how the Protection and Advocacy System operates and how it coordinates the Protection and Advocacy program for individuals with developmental disabilities with other Protection and Advocacy (P&A) programs administered by the State Protection and Advocacy System. This description must address the System's intake process, internal and external referrals of eligible clients, duplication and overlap of services and eligibility, streamlining of advocacy services, collaboration and sharing of information on service needs and development of Statements of Objectives and Priorities for the various advocacy programs.

(3) Priorities as established through the SOP serve as the basis for P&As to determine which cases are selected in a given fiscal year. P&As have the authority to turn down a request for assistance when it is outside the scope of the SOP but they must inform individuals that this is the basis for turning them down.

(d) Each fiscal year, the Protection and Advocacy Agency shall:

(1) Obtain formal public input on its Statement of Objectives and Priorities;

(2) At a minimum, provide for a broad distribution of the proposed Statement of Objectives and Priorities for the next fiscal year in a manner accessible to individuals with developmental disabilities and their representatives, allowing at least 45 days from the date of distribution for comment;

(3) Provide to the State Developmental Disabilities Council and the University Affiliated Program a copy of the proposed Statement of Objectives and Priorities for comments concurrently with the public notice;

(4) Incorporate or address any comments received through the public input and any input received from the State Developmental Disabilities Council and the University Affiliated Program in the final Statement submitted to the Department; and

(5) Address how the Protection and Advocacy System; State Developmental Disabilities Council; and the University Affiliated Program will collaborate with each other and with other public and private entities.

(The requirements under paragraph (b) are approved under control number 0348–0039 by the Office of Management and Budget (OMB). Information collection requirements contained in paragraph (c) are approved under OMB control number 0970–0132 pursuant to sections 142(a)(2) (C) and (D) and section 107(b) of the Act.)

[61 FR 51159, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51159, Sept. 30, 1996, §1386.23 was revised, effective Oct. 30, 1996. For the convenience of the reader, the superseded text is set forth as follows:

§1386.23 Periodic reports: Protection and Advocacy System.

The State Protection and Advocacy Agency must submit:

(a) Written assurance of compliance with section 142 of the Act will be required on a one time only basis. These assurances to the Commissioner must be signed by the Governor or a State official or entity empowered by the Governor or State legislature to provide such assurance. These assurances will remain in effect unless changes occur within the State which will affect the functioning of the Protection and Advocacy system in which case an amendment is required 30 days prior to the effective date of the change. All assurances and/or amendments may be provided in a format of the State's choice and will remain in effect as long as the State receives funds under the Act.

(b) An annual report to the Commissioner describing the activities and accomplishments carried out under the system during the previous year.

(c) Financial Status reports must be submitted by the Protection and Advocacy Agency according to a frequency interval

which will be specified by OHDS. In no case will such reports be required more frequently than quarterly.

(Information collection requirements contained in paragraph (b) under control number 0980–0160 and paragraph (c) under control number 0348–0039 are approved by the Office of Management and Budget)

§ 1386.24 Non-allowable costs for the Protection and Advocacy System.

(a) Federal financial participation is not allowable for:

(1) Costs incurred for activities on behalf of individuals with developmental disabilities to solve problems not directly related to their disabilities and which are faced by the general populace. Such activities include but are not limited to: Preparation of wills, divorce decrees, and real estate proceedings. Allowable costs in such cases would include the Protection and Advocacy System providing disability related technical assistance information and referral to appropriate programs and services; and

(2) Costs not allowed under other applicable statutes. Departmental regulations and issuances of the Office of Management and Budget.

(b) Attorneys fees are considered program income pursuant to Part 74–Administration of Grants and Part 92–Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and must be added to the funds committed to the program and used to further the objectives of the program. This requirement shall apply to all attorneys fees, including those earned by contractors and those received after the project period in which they were earned.

[52 FR 44847, Nov. 20, 1987; 61 FR 51159, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51159, Sept. 30, 1996, §1386.24 was amended by redesignating the introductory text, paragraphs (a) and (b) as paragraphs (a) introductory text, (a)(1) and (a)(2); revising newly redesignated paragraphs (a), introductory text, and (a)(1); and adding a new paragraph (b), effective Oct. 30, 1996. For the convenience of the reader, the superseded text is set forth as follows:

§ 1386.24 Non-allowable costs for the Protection and Advocacy System.

Federal financial participation is not allowable for:

(a) Costs incurred for activities on behalf of persons with developmental disabilities to solve problems not directly related to their disabilities and which are faced by the general populace; and

(b) Costs not allowed under other applicable statutes. Departmental regulations and issuances of the Office of Management and Budget.

§ 1386.25 Allowable litigation costs.

Allotments may be used to pay the otherwise allowable costs incurred by a Protection and Advocacy System in bringing lawsuits in its own right to redress incidents of abuse or neglect, discrimination and other rights violations impacting on individuals with developmental disabilities to obtain access to records and when it appears on behalf of named plaintiffs or a class of plaintiff for such purposes.

[61 FR 51159, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51159, Sept. 30, 1996, §1386.25 was added, effective Oct. 30, 1996.

Subpart C—Federal Assistance to State Developmental Disabilities Councils

§ 1386.30 State plan requirements.

(a) In order to receive Federal financial assistance under this subpart, each State Developmental Disabilities Council must prepare and submit to the Secretary, and have in effect, a State Plan which meets the requirements of sections 122 and 124 of the Act (42 U.S.C. 6022 and 6024) and these regulations. Development of the State Plan and applicable annual amendments are responsibilities of the State Developmental Disabilities Council. The Council will provide opportunities for public input during the planning and development of the State Plan and will consult with the Designated State Agency to determine that the plan is not in conflict with applicable State laws and to obtain appropriate State Plan assurances.

(b) Failure to comply with State plan requirements may result in loss of Federal funds as described in section 127 of the Act (42 U.S.C. 6027).

(c) The State plan may be submitted in any format the State selects as long as the items contained in the Act are addressed. The plan must:

(1) Identify the program unit(s) within the Designated State Agency responsible for helping the Council to obtain assurances and fiscal and other support services.

(2) Identify the priority areas selected by the Council and by the State in which 65% of Federal allotment will be expended.

(3) Where applicable, describe activities in which the State's Developmental Disabilities Council, Protection and Advocacy System agency, and University Affiliated Program(s) collaborate to remove barriers or address critical issues within the State and bring about broad systems changes to benefit individuals with developmental disabilities and, as appropriate, individuals with other disabilities.

(d) The State plan must be reviewed at least once every three years.

(e) (1) The State Plan may provide for funding projects to demonstrate new approaches to direct services which enhance the independence, productivity, and integration and inclusion into the community of individuals with developmental disabilities. Direct service demonstrations must be short-term and include a strategy to locate on-going funding from other sources. For each demonstration funded, the State Plan must include an estimated period of the project's duration and a brief description of how the services will be continued without Federal developmental disabilities program funds. Council funds may not be used to fund on-going services which should be paid for by the State or other sources.

(2) The State plan may provide for funding of other projects or activities, including but not limited to, studies, evaluation, outreach, advocacy, self-advocacy, training, community supports, public education, and prevention. Where extended periods of time are needed to achieve desired results, these projects and activities need not be time-limited.

(f) The State Plan must contain assurances that:

(1) The State will comply with all applicable Federal statutes and regulations in effect during the time that the State is receiving formula grant funding;

(2) The human rights of individuals with developmental disabilities will be protected consistent with section 110 of the Act (42 U.S.C. 6009).

(3) Buildings used in connection with activities assisted under the Plan must meet all applicable provisions of Federal and State laws pertaining to accessibility, fire, health and safety standards.

(4) The State Developmental Disabilities Council shall follow the requirements of section 124(c) (8), (9) and (10) of the Act regarding budgeting, staff hiring and supervision and staff assignment. Budget expenditures must be consistent with applicable State laws and policies regarding grants and contracts and proper accounting and bookkeeping practices and procedures. In relation to staff hiring, the clause ''consistent with State law'' in section 124(c)(9) means that the hiring of State Developmental Disabilities Council staff must be done in accordance with State personnel policies and procedures except that a State shall not apply hiring freezes, reductions in force, prohibitions on staff travel, or other policies, to the extent that such policies would impact staff or functions funded with Federal funds and would prevent the Council from carrying out its functions under the Act.

(Information collection requirements contained in paragraph (c) under control number 0980–0162 and paragraph (e) under control number 0980–0139 are approved by the Office of Management and Budget)

[49 FR 11779, Mar. 27, 1984, as amended at 52 FR 44847, Nov. 20, 1987; 54 FR 47985, Nov. 20, 1989; 61 FR 51159, Sept. 30, 1996; 61 FR 51751, Oct. 3, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51159, Sept. 30, 1996, §1386.30 was amended and corrected at 61 FR 51751, Oct. 3, 1996, by revising paragraphs (a) and (c)(1); redesignating paragraph (e) as (f); republishing newly redesignated paragraph (f), introductory text; revising the newly redesignated paragraphs (f)(2), (f)(3) and (f)(4); and adding new paragraphs

(c)(3) and (e), effective Oct. 30, 1996. For the convenience of the reader, the superseded text is set forth as follows:

§ 1386.30 State plan requirements.

(a) In order to receive Federal financial assistance under this subpart, Councils and States must prepare, submit and have in effect a State plan which meets the requirements or sections 122 and 124(a) of the Act (42 U.S.C. 6022 and 6024(a)(b)) and these regulations.

* * * * *

(c) * * *
(1) Identify the program unit(s) responsible for administration of the plan within the designated State agency or agencies;

* * * * *

(e) The State plan must contain assurances that:
(1) The State will comply with all applicable Federal statutes and regulations in effect during the time that the State is receiving formula grant funding;
(2) The State meets the requirements regarding individual habilitation plans as set forth in section 123 of the Act (42 U.S.C. 6023) and
(3) The human rights of developmentally disabled persons will be protected consistent with section 110 of the Act (42 U.S.C. 6009).
(4) Each Planning Council may, at its option, hire staff and obtain the services of other technical, professional, and clerical staff, that the council determines is necessary to carry out its functions. The designated State Agency shall disburse funds for such personnel consistent with State Law.

* * * * *

§ 1386.31 State Plan submittal and approval.

(a) The Council shall issue a public notice about the availability of the proposed State Plan or State Plan amendment(s) for comment. The Notice shall be published in formats accessible to individuals with developmental disabilities and the general public (e.g., tape, diskette, public forums, newspapers) and shall provide a 45 day period for public review and comment. The Council shall take into account comments submitted within that period and respond in the State Plan to significant comments and suggestions. A summary of the Council's response to State Plan comments shall be submitted with the State Plan and made available for public review. This document shall be made available in accessible formats upon request.

(b) The State plan must be submitted to the appropriate Regional Office of the Department 45 days prior to the fiscal year for which it is applicable. Unless State law provides differently, the State plan and amendments or related documents must be approved by the Governor or the Governor's designee as may be required by any applicable Federal issuances.

(c) Failure to submit an approvable State plan or amendment prior to the Federal fiscal years for which it is applicable may result in the loss of Federal financial participation. Costs resulting from obligations incurred during the period of the fiscal year for which an approved plan is not in effect are not eligible for Federal financial participation.

(d) The Commissioner must approve any State plan or plan amendment provided it meets the requirements of the Act and these regulations.

(e) Amendments to the State plan are required when substantive changes are contemplated in plan content.

[49 FR 11779, Mar. 27, 1984, as amended at 61 FR 51160, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51160, Sept. 30, 1996, §1386.31 was amended by revising the section heading, redesignating the current paragraphs (a), (b), (c), and (d) as (b), (c), (d), and (e), and adding a new paragraph (a), effective Oct. 30, 1996. For the convenience of the reader, the superseded text is set forth as follows:

§ 1386.31 Plan submittal and approval.

(a) The State plan must be submitted to the appropriate Regional Office of the Department 45 days prior to the fiscal year for which it is applicable. Unless State law provides differently, the State plan and amendments or related documents must be approved by the Governor or the Governor's designee as may be required by any applicable Federal issuances.

(b) Failure to submit an approvable State plan or amendment prior to the Federal fiscal years for which it is applicable may result in the loss of Federal financial participation. Costs resulting from obligations incurred during the period of the fiscal year for

which an approved plan is not in effect are not eligible for Federal financial participation.

(c) The Commissioner must approve any State plan or plan amendment provided it meets the requirements of the Act and these regulations.

(d) Amendments to the State plan are required when substantive changes are contemplated in plan content.

§ 1386.32 Periodic reports: Federal assistance to State Developmental Disabilities Councils.

(a) The Governor or appropriate State financial officer must submit financial status reports on the programs funded under this subpart according to a frequency interval which will be specified by the Administration for Children and Families. In no case will such reports be required more frequently than quarterly.

(b) Pursuant to section 107(a) of the Act (U.S.C. 6006a), the State Developmental Disabilities Council shall submit an Annual Program Performance Report in a form that facilitates Council reporting of results of activities required under sections 122 and 124 of the Act. The report shall be submitted to the appropriate Regional ACF office, by January 1 of each year.

[61 FR 51160, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51160, Sept. 30, 1996, §1386.32 was revised, effective Oct. 30, 1996. For the convenience of the reader, the superseded text is set forth as follows:

§ 1386.32 Periodic reports: Basic State grants.

(a) The Governor or the appropriate State financial Officer must submit financial status reports on the programs funded under this subpart according to a frequency interval which will be specified by OHDS. In no case will such reports be required more frequently than quarterly.

(b) By January 1 of each year an annual report shall be submitted pursuant to section 107(a) of the Act. The report may be in a format of the State's choice.

(Information collection requirements contained in paragraph (a) under control number 0348–0039 and paragraph (b) under control number 0980–0172 are approved by the Office of Management and Budget)

§ 1386.33 Protection of employee's interests.

(a) Based on section 122(c)(5)(K) of the Act (42 U.S.C. 6022(c)(5)(K), the State plan must assure fair and equitable arrangements to protect the interest of all institutional employees affected by actions under the plan to provide community living activities. Specific arrangements for the protection of affected employees must be developed through negotiations between the appropriate State authorities and employees or their representatives. Fair and equitable arrangements must include procedures that provide for the impartial resolution of disputes between the State and an employee concerning the interpretation, application, and enforcement of protection arrangements. The State must inform employees of the State's decision to provide for community living activities.

(b) To the maximum extent practicable, fair and equitable arrangements must include provisions for:

(1) The preservation of rights and benefits;

(2) Guaranteeing employment to employees affected by action under the plan to provide alternative community living arrangements; and

(3) Employee training and retraining programs.

(Approved by the Office of Management and Budget under control number 0980–0162)

[49 FR 11779, Mar. 27, 1984, as amended at 52 FR 44847, Nov. 20, 1987; 54 FR 47985, Nov. 20, 1989; 61 FR 51160, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51160, Sept. 30, 1996, §1386.33 was amended by revising paragraph (a), effective Oct. 30, 1996. For the convenience of the reader, the superseded text is set forth as follows:

§ 1386.33 Protection of employee's interests.

(a) Based on section 122(b)(7)(B) of the Act (42 U.S.C. 6022(b)(7)(B)), the State plan must provide for fair and equitable arrangements to protect the interest of all institutional employees affected by actions under the plan to provide alternative community living arrangements. Specific arrangements for the protection of affected employees must be developed through negotiations between the appropriate State authorities and employees or their representatives. Fair and equitable arrangements must include procedures that provide for the impartial resolution of disputes between the State and an employee

concerning the interpretation, application, and enforcement of protection arrangements. The State must inform employees of the State's decision to provide alternative community living arrangements.

* * * * *

§ 1386.34 Designated State Agency.

(a) The Designated State Agency shall provide the required assurances and other support services as requested by and negotiated with the Council. These include:

(1) Provision of financial reporting and other services as provided under section 124(d)(3)(C) of the Act; and

(2) Information and direction, as appropriate, on procedures on the hiring, supervision and assignment of staff in accordance with State law.

(b) If the State Developmental Disabilities Council requests a review by the Governor (or legislature) of the Designated State Agency, the Council must provide documentation of the reason for change and recommend a preferred Designated State Agency.

(c) After the review is completed, a majority of the non-State agency members of the Council may appeal to the Assistant Secretary for a review of the designation of the designated State agency if the Council's independence as an advocate is not assured because of the actions or inactions of the designated State agency.

(d) The following steps apply to the appeal of the Governor's (or legislature's) designation of the Designated State Agency.

(1) Prior to an appeal to the Assistant Secretary, Administration for Children and Families, the State Developmental Disabilities Council, must give a 30 day written notice, by certified mail, to the Governor (or legislature) of the majority of non-State members' intention to appeal the designation of the Designated State Agency.

(2) The appeal must clearly identify the grounds for the claim that the Council's independence as an advocate is not assured because of the actions or inactions of the designated State agency.

(3) Upon receipt of the appeal from the State Developmental Disabilities Council, the Assistant Secretary will notify the State Developmental Disabilities Council and the Governor (or legislature), by certified mail, that the appeal has been received and will be acted upon within 60 days. The Governor (or legislature) shall within 10 working days from the receipt of the Assistant Secretary's notification provide written comments to the Assistant Secretary (with a copy sent by registered or certified mail to the Council) on the claims in the Council's appeal. Either party may request, and the Assistant Secretary may grant, an opportunity for an informal meeting with the Assistant Secretary at which representatives of both parties will present their views on the issues in the appeal. The meeting will be held within 20 working days of the submission of written comments by the Governor (or legislature). The Assistant Secretary will promptly notify the parties of the date and place of the meeting.

(4) The Assistant Secretary will review the issue(s) and provide a final written decision within 60 days following receipt of the State Developmental Disabilities Council's appeal. If the determination is made that the Designated State Agency should be redesignated, the Governor (or legislature) must provide written assurance of compliance within 45 days from receipt of the decision.

(5) During any time of this appeals process the State Developmental Disabilities Council may withdraw such request if resolution has been reached with the Governor (or legislature) on the designation of the Designated State Agency. The Governor (or legislature) must notify the Assistant Secretary in writing of such an occurrence.

(e) The designated State agency may authorize the Council use or contract with State agencies other than the designated State agency to perform functions of the designated State agency.

[61 FR 51160, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51160, Sept. 30, 1996, §1386.34 was added, effective Oct. 30, 1996.

§1386.35 Allowable and non-allowable costs for Federal Assistance to State Developmental Disabilities Councils.

(a) Under this subpart, Federal financial participation is available in costs resulting from obligations incurred under the approved State plan for the necessary expenses of the approved State plan for the necessary expenses of the State Council, the administration and operation of the State plan, and training of personnel.

(b) Expenditures which are not allowable for Federal financial participation are:

(1) Costs incurred by institutions or other residential or non-residential programs which do not comply with the Congressional findings with respect to the rights of individuals with developmental disabilities in section 110 of the Act (42 U.S.C. 6009).

(2) Costs incurred for activities not provided for in the approved State plan; and

(3) Costs not allowed under other applicable statutes. Departmental regulations or issuances of the Office of Management and Budget.

(c) Expenditure of funds which supplant State and local funds will be disallowed. Supplanting occurs when State or local funds previously used to fund activities in the developmental disabilities State Plan are replaced by Federal funds which are then used for the same purpose. However, supplanting does not occur if State or local funds are replaced with Federal funds for a particular activity or purpose in the approved State Plan if the State or local funds are then used for other activities or purposes in the approved State Plan.

(d) For purposes of determining aggregate minimum State share of expenditures, there are three categories of expenditures:

(1) Expenditures for projects or activities carried out directly by the Council and Council staff, as described in section 125A(a)(2) of the Act, require no non-Federal aggregate participation.

(2) Expenditures for projects with activities or products targeted to urban or rural poverty areas but not carried out directly by the Council and Council staff, as described in section 125A(a)(2) of the Act, shall have non-Federal participation of at least 10% in the aggregate.

(3) All other activities not directly carried out by the Council and Council staff, shall have non-Federal participation of at least 25% in the aggregate.

(e) The Council may vary the non-Federal participation required on a project by project, activity by activity basis (both poverty and non-poverty activities), including requiring no non-Federal participation from particular projects or activities as the Council deems appropriate so long as the requirement for aggregate non-Federal participation is met.

[49 FR 11779, Mar. 27, 1984, as amended at 52 FR 44847, Nov. 20, 1987; 54 FR 47985, Nov. 20, 1989; 61 FR 51161, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51161, Sept. 30, 1996, §1386.35 was amended by revising the heading and paragraph (b)(1) and adding new paragraphs (d) and (e), effective Oct. 30, 1996. For the convenience of the reader, the superseded text is set forth as follows:

§1386.35 Allowable and non-allowable costs for basic State grants.

* * * * *

(b) * * *

(1) Cost incurred by institutions or other residential or non-residential programs which do not comply with the Congressional findings with respect to persons with developmental disabilities in section 110 of the Act (42 U.S.C. 6009).

* * * * *

§1386.36 Final disapproval of the State plan or plan amendments.

The Department will disapprove any State plan or plan amendment only after the following procedures have been complied with:

(a) The State plan has been submitted to the appropriate HHS Regional Office, and the Regional Office and State have been unable to resolve their differences.

(b) The Regional Office has prepared a detailed written analysis of its reasons for recommending disapproval and has transmitted its analyses and all

other relevant material to the Commissioner, and has provided the State Council and State agency with copies of the material.

(c) The Commissioner, after review of the records and the recommendation of the Regional Office, has determined whether the State plan, in whole or in part, is not approvable. Notice of this determination has been sent to the State and contains appropriate references to the records, provisions of the statute and regulations, and all relevant interpretations of applicable laws and regulations. The notification of the decision must inform the State of its right to appeal in accordance with 45 CFR part 1386, subpart D.

(d) The Commissioner's decision has been forwarded to the State Council and agency by certified mail with a return receipt requested.

(e) A State has filed its request for a hearing with the Assistant Secretary within 21 days of the receipt of the decision. The request for a hearing must be sent by certified mail to the Assistant Secretary. The date of mailing the request is considered the date of filing if it is supported by independent evidence of mailing, otherwise the date of receipt shall be considered the date of filing.

[49 FR 11779, Mar. 27, 1984, as amended at 61 FR 51161, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51161, Sept. 30, 1996, §1386.36 was amended by revising the section heading and paragraph (e), effective Oct. 30, 1996. For the convenience of the reader, the superseded text is set forth as follows:

§ 1386.36 Final disapproval of the State plan amendments or plan amendments.

* * * * *

(e) A State has filed its request for a hearing with the Assistant Secretary for Human Development Services (ASHDS) within 21 days of the receipt of the decision. The request for a hearing must be sent by certified mail to the ASHDS. The date of mailing the request is considered the date of filing if it is supported by independent evidence of mailing, otherwise the date of receipt shall be considered the date of filing.

Subpart D—Practice and Procedure for Hearings Pertaining to States' Conformity and Compliance With Developmental Disabilities State Plans, Reports and Federal Requirements

GENERAL

§ 1386.80 Definitions.

For purposes of this subpart:

Assistant Secretary means the Assistant Secretary for Children and Families (ACF).

ADD means Administration on Developmental Disabilities, Administration for Children and Families.

Presiding officer means anyone designated by the Assistant Secretary to conduct any hearing held under this subpart. The term includes the Assistant Secretary if the Assistant Secretary presides over the hearing.

Payment or Allotment means an amount provided under Part B or C of the Developmental Disabilities Assistance and Bill of Rights Act. This term includes Federal funds provided under the Act irrespective of whether the State must match the Federal portion of the expenditure. This term shall include funds previously covered by the terms ''Federal financial participation,'' ''the State's total allotment,'' ''further payments,'' ''payments,'' ''allotment'' and ''Federal funds.''

[61 FR 51161, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51161, Sept. 30, 1996, §1386.80 was revised, effective Oct. 30, 1996. For the convenience of the reader, the superseded text is set forth as follows:

§ 1386.80 Definitions.

For purposes of this subpart:

Assistant Secretary means the Assistant Secretary for Human Development Services (HDS) or a presiding officer.

ADD means Administration on Developmental Disabilities, Office of Human Development Services.

Presiding officer means anyone designated by the Assistant Secretary to conduct any hearing held under this subpart. The term includes the Assistant Secretary if the Assistant Secretary presides over the hearing.

§ 1386.81 Scope of rules.

(a) The rules of procedures in this subpart govern the practice for hearings afforded by the Department to States pursuant to sections 122, 127 and 142 of the Act. (42 U.S.C. 6022, 6027 and 6042).

(b) Nothing in this part is intended to preclude or limit negotiations between the Department and the State, whether before, during, or after the hearing to resolve the issues which are, or otherwise would be, considered at the hearing. Negotiations, and resolution of issues are not part of the hearing, and are not governed by the rules in this subpart, except as otherwise provided in this subpart.

[49 FR 11779, Mar. 27, 1984, as amended at 52 FR 44847, Nov. 20, 1987]

§ 1386.82 Records to be public.

All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding are subject to public inspection.

§ 1386.83 Use of gender and number.

As used in this subpart, words importing the singular number may extend and be applied to several persons or things, and vice versa. Words importing either gender may be applied to the other gender or to organizations.

§ 1386.84 Suspension of rules.

Upon notice to all parties, the Assistant Secretary may modify or waive any rule in this subpart, unless otherwise expressly provided, upon determination that no party will be unduly prejudiced and justice will be served.

§ 1386.85 Filing and service of papers.

(a) All papers in the proceedings must be filed with the designated individual in an original and two copies. Only the originals of exhibits and transcripts of testimony need be filed.

(b) Copies of papers in the proceedings must be served on all parties by personal delivery or by mail. Service on the party's designated representative is deemed service upon the party.

[49 FR 11779, Mar. 27, 1984, as amended at 61 FR 51161, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51161, Sept. 30, 1996, §1386.85 was amended by revising paragraph (a), effective Oct. 30, 1996. For the convenience of the reader, the superseded text is set forth as follows:

§ 1386.85 Filing and service of papers.

(a) All papers in the proceedings must be filed with the HDS Hearing Clerk in an original and two copies. Only the originals of exhibits and transcripts of testimony need be filed.

* * * * *

PRELIMINARY MATTERS—NOTICE AND PARTIES

§ 1386.90 Notice of hearing or opportunity for hearing.

Proceedings are commenced by mailing a notice of hearing or opportunity for hearing from the Assistant Secretary to the State Developmental Disabilities Council and the Designated State Agency, or to the State Protection and Advocacy System or designating official. The notice must state the time and place for the hearing, and the issues which will be considered. The notice must be published in the FEDERAL REGISTER.

[49 FR 11779, Mar. 27, 1984, as amended at 61 FR 51161, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51161, Sept. 30, 1996, §1386.90 was revised, effective Oct. 30, 1996. For the convenience of the reader, the superseded text is set forth as follows:

§ 1386.90 Notice of hearing or opportunity for hearing.

Proceedings are commenced by mailing a notice of hearing or opportunity for hearing from the Assistant Secretary to the State council and the designated State agency, or to the State protection and advocacy office or official. The notice must state the time and place for the hearing, and the issues which will be considered. The notice must be published in the FEDERAL REGISTER.

§ 1386.91 Time of hearing.

The hearing must be scheduled not less than 30 days nor more than 60 days after the date notice of the hearing is mailed to the State.

§ 1386.92 Place.

The hearing must be held on a date and at a time and place determined by the Assistant Secretary with due regard for convenience, and necessity of the parties or their representatives. The site of the hearing shall be accessible to individuals with disabilities.

[61 FR 51162, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51162, Sept. 30, 1996, §1386.92 was revised, effective Oct. 30, 1996. For the convenience of the reader, the superseded text is set forth as follows:

§ 1386.92 Place.

The hearing must be held at a date, time, and place determined by the Assistant Secretary with due regard for the convenience and necessity of the parties or their representatives.

§ 1386.93 Issues at hearing.

(a) Prior to a hearing, the Assistant Secretary may notify the State in writing of additional issues which will be considered at the hearing. That notice must be published in the FEDERAL REGISTER. If that notice is mailed to the State less than 20 days before the date of the hearing, the State or any other party, at its request, must be granted a postponement of the hearing to a date 20 days after the notice was mailed, or such later date as may be agreed to by the Assistant Secretary.

(b) If any issue is resolved in whole or in part, but new or modified issues are presented, the hearing must proceed on the new or modified issues.

(c)(1) If at any time, whether prior to, during, or after the hearing, the Assistant Secretary finds that the State has come into compliance with Federal requirements on any issue in whole or in part, he or she must remove the issue from the proceedings in whole or in part as may be appropriate. If all issues are removed the Assistant Secretary must terminate the hearing.

(2) Prior to the removal of an issue, in whole or in part, from a hearing involving issues relating to the conformity with Federal requirements under Part B of the Act, of the State plan or the activities of the State's Protection and Advocacy System, the Assistant Secretary must provide all parties other than the Department and the State (see §1386.94(b)) with the statement of his or her intention to remove an issue from the hearings and the reasons for that decision. A copy of the proposed State plan provision or document explaining changes in the activities of the State's protection and advocacy system on which the State and the Assistant Secretary have settled must be sent to the parties. The parties must have an opportunity to submit in writing within 15 days their views as to, or any information bearing upon, the merits of the proposed provision and the merits of the reasons for removing the issue from the hearing.

(d) In hearings involving questions of noncompliance of a State's operation of its program under Part B of the Act with the State plan or with Federal requirements or compliance of the State's Protection and Advocacy System with Federal requirements, the same procedure set forth in paragraph (c)(2) of this section must be followed with respect to any report or evidence resulting in a conclusion by the Assistant Secretary that a State has achieved compliance.

(e) The issues considered at the hearing must be limited to those issues of which the State is notified as provided in §1386.90 and paragraph (a) of this section, and new or modified issues described in paragraph (b) of this section, and may not include issues or parts of issues removed from the proceedings pursuant to paragraph (c) of this section.

[49 FR 11779, Mar. 27, 1984, as amended at 61 FR 51162, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51162, Sept. 30, 1996, §1386.93 was amended by revising paragraphs (c)(2) and (d), effective Oct. 30, 1996. For the convenience of the reader, the superseded text is set forth as follows:

§ 1386.93 Issues at hearing.

* * * * *

(c) * * *

(2)(i) Prior to the removal of an issue, in whole or in part, from a hearing involving issues relating to the conformity with Federal requirements of State plan or report on the description of the protection and advocacy system with Federal requirements, the Assistant Secretary must provide all parties other than the Department and the State

(see §1386.94(b)) with the Statement of his or her intention to remove an issue from the hearings and the reasons for that decision. A copy of the proposed State plan provision or report on the description of the protection and advocacy system on which the State and the Assistant Secretary have settled must be sent to the parties. The parties must have an opportunity to submit in writing within 15 days their views as to, or any information bearing upon, the merits of the proposed provision and the merits of the reasons for removing the issue from the hearing.

(d) In hearings involving questions of noncompliance of a State's operation of its program with the State plan or system description, or with Federal requirements, the same procedure set forth in paragraph (c)(2) of this section must be followed with respect to any report or evidence resulting in a conclusion by the Assistant Secretary that a State has achieved compliance.

* * * * *

§1386.94 Request to participate in hearing.

(a) The Department, the State, the State Developmental Disabilities Council, the Designated State Agency, and the State Protection and Advocacy System, as appropriate, are parties to the hearing without making a specific request to participate.

(b)(1) Other individuals or groups may be recognized as parties if the issues to be considered at the hearing have caused them injury and their interests are relevant to the issues in the hearing.

(2) Any individual or group wishing to participate as a party must file a petition with the designated individual within 15 days after notice of the hearing has been published in the FEDERAL REGISTER, and must serve a copy on each party of record at that time in accordance with §1386.85(b). The petition must concisely state:

(i) Petitioner's interest in the proceeding;

(ii) Who will appear for petitioner;

(iii) The issues the petitioner wishes to address; and

(iv) Whether the petitioner intends to present witnesses.

(c) (1) Any interested person or organization wishing to participate as amicus curiae must file a petition with the designated individual before the commencement of the hearing. The petition must concisely state:

(i) The petitioner's interest in the hearing;

(ii) Who will represent the petitioner, and

(iii) The issues on which the petitioner intends to present argument.

(2) The presiding officer may grant the petition if he or she finds that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the outcome and may contribute materially to the proper disposition of the issues.

(3) An amicus curiae may present a brief oral statement at the hearing at the point in the proceedings specified by the presiding officer. It may submit a written statement of position to the presiding officer prior to the beginning of a hearing and must serve a copy on each party. It also may submit a brief or written statement at such time as the parties submit briefs and must serve a copy on each party.

[49 FR 11779, Mar. 27, 1984, as amended at 61 FR 51162, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51162, Sept. 30, 1996, §1386.94 was amended by revising paragraphs (a), (b)(2), and (c), effective Oct. 30, 1996. For the convenience of the reader, the superseded text is set forth as follows:

§1386.94 Request to participate in hearing.

(a) The Department, the State council, the designated State agency, and the State protection and advocacy office, as appropriate, are parties to the hearing without making a specific request to participate.

(b) * * *

(2) Any individual or group wishing to participate as a party must file a petition with the HDS Hearing Clerk within 15 days after notice of the hearing has been published in the FEDERAL REGISTER, and must serve a copy on each party of record at that time in accordance with §1386.85(b). The petition must concisely state:

(i) Petitioner's interest in the proceeding,

(ii) Who will appear for petitioner,

(iii) The issues petitioner wishes to address and

(iv) Whether petitioner intends to present witnesses.

(3) Any party may file comments within 5 days of receipt of such petition.

(4) The presiding officer must promptly determine whether each petitioner had the requisite interest in the proceedings and shall permit or deny participation accordingly.

Where petitions to participate as parties are made by individuals or groups with common interest, the presiding officer may request all of the petitioners to designate a single representative, or he or she may recognize one or more of the petitioners to represent all of them. The presiding officer must give each petitioner written notice of the decision on its petition. If any petition is denied, the presiding officer must briefly state the grounds for denial.

* * * * *

(c)(1) Any interested person or organization wishing to participate as amicus curiae must file a petition with the HDS Hearing Clerk before the commencement of the hearing. The petition must concisely state: (i) The petitioner's interest in the hearing,

(ii) Who will represent the petitioner, and

(iii) The issues on which petitioner intends to present argument. The presiding officer may grant the petition if he or she finds that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the outcome and may contribute materially to the proper disposition of the issues.

(2) An amicus curiae may present a brief oral statement at the hearing at the point in the proceedings specified by the presiding officer. It may submit a written statement of position to the presiding officer prior to the beginning of a hearing and must serve a copy on each party. It may also submit a brief or written statement at such time as the parties submit briefs and must serve a copy on each party.

HEARING PROCEDURES

§ 1386.100 Who presides.

(a) The presiding officer at a hearing must be the Assistant Secretary or someone designated by the Assistant Secretary.

(b) The designation of a presiding officer must be in writing. A copy of the designation must be served on all parties and amici curiae.

§ 1386.101 Authority of presiding officer.

(a) The presiding officer has the duty to conduct a fair hearing, avoid delay, maintain order, and make a record of the proceedings. The presiding officer has all powers necessary to accomplish these ends, including, but not limited to, the power to:

(1) Change the date, time, and place of the hearing, upon notice to the parties. This includes the power to continue the hearing in whole or in part;

(2) Hold conferences to settle or simplify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceedings;

(3) Regulate participation of parties and amici curiae and require parties and amici curiae to state their positions with respect to the issues in the proceeding;

(4) Administer oaths and affirmations,

(5) Rule on motions and other procedural items on matters pending before him or her, including issuance of protective orders or other relief to a party against whom discovery is sought;

(6) Regulate the course of the hearing and conduct of counsel therein;

(7) Examine witnesses;

(8) Receive, rule on, exclude, or limit evidence or discovery;

(9) Fix for the time for filing motions, petitions, briefs, or other items in matters pending before him or her,

(10) If the presiding officer is the Assistant Secretary, make a final decision;

(11) If the presiding officer is a person other than the Assistant Secretary, he or she shall certify the entire record, including recommended findings and proposed decision, to the Assistant Secretary;

(12) Take any action authorized by the rules in the subpart or 5 U.S.C. 551–559; and

(b) The presiding officer does not have authority to compel the production of witnesses, papers, or other evidence by subpoena.

(c) If the presiding officer is a person other than the Assistant Secretary, his or her authority is to render a recommended decision with respect to program requirements which are to be considered at the hearing. In case of any noncompliance, he or she shall recommend whether payments or allotments should be withheld with respect to the entire State plan or the activities of the State's Protection and Advocacy System, or whether the payments or allotments should be withheld only with respect to those parts of

the program affected by such noncompliance.

[49 FR 11779, Mar. 27, 1984, as amended at 61 FR 51162, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51162, Sept. 30, 1996, §1386.101 was amended by revising paragraphs (a)(11) and (c), effective Oct. 30, 1996. For the convenience of the reader, the superseded text is set forth as follows:

§1386.101 Authority of presiding officer.

(a) * * *

* * * * *

(11) If the presiding officer is a person designated by the Assistant Secretary, examiner, certify the entire record, including recommended findings and proposed decision, to the Assistant Secretary;

* * * * *

(c) If the presiding officer is a person designated by the Assistant Secretary, examiner, his or her authority is to render a recommended decision with respect to program requirements which are to be considered at the hearing. In case of any noncompliance, he or she shall recommend whether Federal financial participation should be withheld with respect to the entire State plan or the report of the system description, or whether Federal financial participation should be withheld only with respect to those parts of the program affected by such noncompliance.

§1386.102 Rights of parties.

All parties may:

(a) Appear by counsel, or other authorized representative, in all hearing proceedings;

(b) Participate in any prehearing conference held by the presiding officer,

(c) Agree to stipulations of facts which will be made a part of the record;

(d) Make opening statements at the hearing;

(e) Present relevant evidence on the issues at the hearing;

(f) Present witnesses who then must be available for cross-examination by all other parties;

(g) Present oral arguments at the hearing;

(h) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

§1386.103 Discovery.

The Department and any party named in the Notice issued pursuant to §1386.90 has the right to conduct discovery (including depositions) against opposing parties as provided by the Federal Rules of Civil Procedure. There is no fixed rule on priority of discovery. Upon written motion, the presiding officer must promptly rule upon any objection to discovery action. The presiding officer also has the power to grant a protective order or relief to any party against whom discovery is sought and to restrict or control discovery so as to prevent undue delay in the conduct of the hearing. Upon the failure of any party to make discovery, the presiding officer may issue any order and impose any sanction other than contempt orders authorized by Rule 37 of the Federal Rules of Civil Procedure.

§1386.104 Evidentiary purpose.

The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather, it must be presented in statements, memoranda, or briefs, as directed by the presiding officer. Brief opening statements, which shall be limited to a statement of the party's position and what it intends to prove, may be made at hearings.

§1386.105 Evidence.

(a) *Testimony.* Testimony by witnesses at the hearing is given orally under oath or affirmation. Witnesses must be available at the hearing for cross-examination by all parties.

(b) *Stipulations and exhibits.* Two or more parties may agree to stipulations of fact. Such stipulations, or any exhibit proposed by any party, must be exchanged at the prehearing conference or at a different time prior to the hearing if the presiding officer requires it.

(c) *Rules of evidence.* Technical rules of evidence do not apply to hearings conducted pursuant to this subpart, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination are

applied where reasonably necessary by the presiding officer. A witness may be cross-examined on any matter material to the proceeding without regard to the scope of his or her direct examination. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record is open to examination by the parties and opportunity must be given to refute facts and arguments advanced on either side of the issues.

§ 1386.106 Exclusion from hearing for misconduct.

Disrespectful, disorderly, or contumacious language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at the hearing before a presiding officer shall constitute grounds for immediate exclusion of such person from the hearing by the presiding officer.

§ 1386.107 Unsponsored written material.

Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a hearing is placed in the correspondence section of the docket of the proceeding. This material is not deemed part of the evidence or record in the hearing.

§ 1386.108 Official transcript.

The Department will designate the official reporter for all hearings. The official transcript of testimony taken, together with any stipulations, exhibits, briefs, or memoranda of law filed with them is filed with the Department Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance. Transcripts must be taken by stenotype machine and not be voice recording devices, unless otherwise agreed by all of the parties and the presiding officer.

§ 1386.109 Record for decision.

The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision, constitute the exclusive record for decision.

POSTHEARING PROCEDURES, DECISIONS

§ 1386.110 Posthearing briefs.

The presiding officer must fix the time for filing posthearing briefs. This time may not exceed 30 days after termination of the hearing and receipt of the transcript. Briefs may contain proposed fundings of fact and conclusions of law. If permitted, reply briefs may be filed no later than 15 days after filing of the posthearing briefs.

§ 1386.111 Decisions following hearing.

(a) If the Assistant Secretary is the presiding officer, he or she must issue a decision within 60 days after the time for submission of posthearing briefs has expired.

(b)(1) If the presiding officer is a person designated by the Assistant Secretary, he or she must, within 30 days after the time for submission of posthearing briefs has expired, certify the entire record to the Assistant Secretary including recommended findings and proposed decision. The Assistant Secretary must serve a copy of the recommended findings and proposed decision upon all parties and amici.

(2) Any party may, within 20 days, file exceptions to the recommended findings and proposed decision and supporting brief or statement with the Assistant Secretary.

(3) The Assistant Secretary must review the recommended decision and, within 60 days of its issuance, issue his or her own decision.

(c) If the Assistant Secretary concludes:

(1) In the case of a hearing pursuant to sections 122, 127, or 142 of the Act, that a State plan or the activities of the State's Protection and Advocacy System does not comply with Federal requirements, he or she shall also specify whether the State's payment or allotment for the fiscal year will not be authorized for the State or whether, in

the exercise of his or her discretion, the payment or allotment will be limited to the parts of the State plan or the activities of the State's Protection and Advocacy System not affected by the noncompliance.

(2) In the case of a hearing pursuant to section 127 of the Act that the State is not complying with the requirements of the State plan, he or she must also specify whether the State's payment or allotment will not be made available to the State or whether, in the exercise of his or her discretion, the payment or allotment will be limited to the parts of the State plan not affected by such noncompliance. The Assistant Secretary may ask the parties for recommendations or briefs or may hold conferences of the parties on these questions.

(d) The decision of the Assistant Secretary under this section is the final decision of the Secretary and constitutes ''final agency action'' within the meaning of 5 U.S.C. 704 and the ''Secretary's action'' within the meaning of Section 129 of the Act (42 U.S.C. 6029). The Assistant Secretary's decision must be promptly served on all parties and amici.

[49 FR 11779, Mar. 27, 1984, as amended at 52 FR 44847, Nov. 20, 1987; 61 FR 51162, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51162, Sept. 30, 1996, §1386.111 was amended by revising paragraphs (c) and (d), effective Oct. 30, 1996. For the convenience of the reader, the superseded text is set forth as follows:

§1386.30.111 Decisions following hearing.

* * * * *

(c) If the Assistant Secretary concludes:

(1) In the case of a hearing under sections 122, 127 and 142 of the Act that a State plan or report on the State's protection and advocacy system does not comply with Federal requirements, he or she shall also specify whether the State's total allotment for the fiscal year will not be authorized for the State or whether, in the exercise of his or her discretion, the allotment will be limited to parts of the State plan or the report not affected by the noncompliance.

(2) In the case of a hearing pursuant to section 135 of the Act that the State is not complying with requirements of the State plan or the report on the description of the State's protection and advocacy system, he or she must also specify whether Federal financial participation will not be made available to the State or whether, in the exercise of his or her discretion. Federal financial participation will be limited to categories under the State plan or the report on the description of the State's protection and advocacy system not affected by such noncompliance. The Assistant Secretary may ask the parties for recommendations or briefs or may hold conferences of the parties on these questions.

(d) The decision of the Assistant Secretary under this section is the final decision of the Secretary and constitutes ''final agency action'' within the meaning of 5 U.S.C. 704 and the ''Secretary's action'' within the meaning of section 138 of the Act. The Assistant Secretary's decision must be promptly served on all parties and amici.

§1386.112 Effective date of decision by the Assistant Secretary.

(a) If, in the case of a hearing pursuant to section 122 of the Act, the Assistant Secretary concludes that a State plan does not comply with Federal requirements, and the decision provides that the payment or allotment will be authorized but limited to parts of the State plan not affected by such noncompliance, the decision must specify the effective date for the authorization of the payment or allotment.

(b) In the case of a hearing pursuant to sections 127 or 142 of the Act, if the Assistant Secretary concludes that the State is not complying with the requirements of the State plan or the activities of the State's Protection and Advocacy System do not comply with Federal requirements, the decision that further payments or allotments will not be made to the State, or will be limited to the parts of the State plan or activities of the State's Protection and Advocacy System not affected, must specify the effective date for withholding payments of allotments.

(c) The effective date may not be earlier than the date of the decision of the Assistant Secretary and may not be later than the first day of the next calendar quarter.

(d) The provision of this section may not be waived pursuant to §1386.84.

[49 FR 11779, Mar. 27, 1984, as amended 61 FR 51162, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51162, Sept. 30, 1996, §1386.112 was amended by revising paragraphs (a) and (b), effective Oct. 30, 1996. For the convenience of the reader, the superseded text is set forth as follows:

§ 1386.112 Effective date of decision by the Assistant Secretary.

(a) If, in the case of a hearing pursuant to section 135 of the Act, the Assistant Secretary concludes that a State plan or the report on the description of the State's protection and advocacy system does not comply with Federal requirements, and the decision provides that the allotment will be authorized but limited to parts of the State plan or the report on the description of the State's protection and advocacy system not affected by such noncompliance, the decision must specify the effective date for the authorization of the allotment.

(b) In the case of a hearing pursuant to sections 113, 133 if the Assistant Secretary concludes that the State is not complying with requirements of the State plan or report on the description of the State's protection and advocacy system, the decision that further payments will not be made to the State, or that payments will be limited to parts of the State plan or the report on the description of the State's protection and advocacy system not affected, must specify the effective date for the withholding of Federal funds.

* * * * *

PART 1387—PROJECTS OF NATIONAL SIGNIFICANCE

AUTHORITY: 42 U.S.C. 6000 et. seq.

§ 1387.1 General requirements.

(a) All projects funded under this part must be of national significance and serve or relate to individuals with developmental disabilities to comply with section 162 of the Act.

(b) Based on section 162(d), proposed priorities for grants and contracts will be published in the FEDERAL REGISTER and a 60 day period for public comments will be allowed.

(c) The requirements concerning format and content of the application, submittal procedures, eligible applicants and final priority areas will be published in program announcements in the FEDERAL REGISTER.

(d) Projects of National Significance, including technical assistance and data collection grants, must be exemplary and innovative models and have potential for dissemination or knowledge utilization at the local level as well as nationally or otherwise meet the goals of part E of the Act.

[54 FR 47985, Nov. 20, 1989, as amended at 61 FR 51163, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51163, Sept. 30, 1996, §1387.1 was amended by revising paragraphs (a), (b), and (d), effective Oct. 30, 1996. For the convenience of the reader, the superseded text is set forth as follows:

§ 1387.1 General requirements.

(a) All projects funded under this part must be of national significance and serve or relate to the developmentally disabled to comply with section 162 of the Act.

(b) Based on section 162(c), proposed priorities for grants and contracts will be published in the FEDERAL REGISTER and a 60 day period for public comments will be allowed.

* * * * *

(d) Projects of national significance must be exemplary models and have potential for replication or otherwise meet the goals of part E of the Act.

PART 1388—THE UNIVERSITY AFFILIATED PROGRAMS (Eff. 10–30–96)

Sec.

AUTHORITY: 42 U.S.C. 6063 et. seq.

SOURCE: 61 FR 51163, Sept. 30, 1996, unless otherwise noted.

EDITORIAL NOTE: For nomenclature changes to this part, see 54 FR 47985, Nov. 20, 1989.

EFFECTIVE DATE NOTE: At 61 FR 51163, Sept. 30, 1996, part 1388 was revised, effective Oct. 30, 1996. For the convenience of the user, part 1388 remaining in effect until Oct. 30, 1996, follows the text of this new part.

§ 1388.1 Definitions.

For purposes of this part:

Accessible means UAPs are characterized by their program and physical accommodation and their demonstrated commitment to the goals of the Americans with Disabilities Act.

Capacity Building means that UAPs utilize a variety of approaches to strengthen their university and their local, State, regional and National communities. These approaches include, but are not limited to such activities as:

(1) Enriching program depth and breadth, for example, recruiting individuals with developmental disabilities and their families, local community leaders, additional faculty and students to participate in the UAP;

(2) Acquiring additional resources, for example, grants, space, and volunteer manpower; and

(3) Carrying out systems changes, for example, promoting inclusive programming for persons with developmental disabilities across all ages.

Collaboration means that the UAP cooperates with a wide range of persons, systems, and agencies, whether they utilize services of the UAP or are involved in UAP planning and programs. These entities include individuals with developmental disabilities and family members, as well as the State Developmental Disabilities Councils, the Protection and Advocacy agencies, other advocacy and disability groups, university components, generic and specialized human service agencies, State agencies and citizen and community groups. An example of this cooperation is the Consumer Advisory Committee, a required element in each UAP.

Cultural Diversity means that UAPs are characterized by their commitment to involve individuals with disabilities, family members and trainees from diverse cultural backgrounds in all levels of their activities. This commitment to cultural diversity means that each UAP must assure that individuals from racial and ethnic minority background are fully included; that efforts are made to recruit individuals from minority backgrounds into the field of developmental disabilities; that specific efforts must be made to ensure that individuals from minority backgrounds have effective and meaningful opportunities for full participation in the developmental disabilities service system; and that recruitment efforts at the levels of preservice training, community training, practice, administration and policymaking must focus on bringing large numbers of racial ethnic minorities into the field in order to provide appropriate skills, knowledge, role models, and sufficient personnel to address the growing needs of an increasingly diverse population.

Culturally competent means provision of services, supports, or other assistance in a manner that is responsive to the beliefs, interpersonal styles, attitudes, language and behaviors of individuals who are receiving services, and that has the greatest likelihood of ensuring their maximum participation in the program.

Diverse Network means that although each UAP has the same mandates under the Act, the expression of these common mandates differs across programs. Each UAP must implement these mandates within the context of their host university, their location within the university, the needs of the local and State community, the cultural composition of their State, their resources and funding sources, and their institutional history. These factors converge to create a network of unique and distinct programs, bound together by common mandates but enriched by diverse composition.

Interdisciplinary Training means the use of individuals from different professional specialties for UAP training and service delivery.

Lifespan Approach means that UAP activities address the needs of individuals with disabilities who are of all ages.

Mandated Core Functions means the UAP must perform:

(1) Interdisciplinary preservice preparation;

(2) Community service activities (community training and technical assistance); and

(3) Activities related to dissemination of information and research findings.

Program Criteria means a statement of the Department's expectation regarding the direction and desired outcome of the University Affiliated Program's operation.

Research and evaluation means that the UAP refines its activities on the basis of evaluation results. As members of the university community, involvement in program-relevant research and development of new knowledge are important components of UAPs.

State-of-the-art means that UAP activities are of high quality (using the latest technology), worthy of replication (consistent with available resources), and systemically evaluated.

§ 1388.2 Program criteria—purpose.

The program criteria will be used to assess the quality of the University Affiliated Programs (UAP). The overall purpose of the program criteria is to assure the promotion of independence, productivity, integration and inclusion of individuals with developmental disabilities. Compliance with the program criteria is a prerequisite for a UAP to receive the minimum funding level of a UAP. However, compliance with the program criteria does not, by itself, assure funding. The Program Criteria are one part of the Quality Enhancement System (QES), and provide a structure for self-assessment and peer review of each UAP. (The QES is a holistic approach to enable persons with developmental disabilities and their families to achieve maximum potential. All UAPs use the QES.)

§ 1388.3 Program criteria—mission.

(a) Introduction to mission: The UAP is guided by values of independence, productivity, integration and inclusion of individuals with developmental disabilities and their families. The purpose and scope of the activities must be consistent with the Act as amended and include the provision of training, service, research and evaluation, technical assistance and dissemination of information in a culturally competent manner, including the meaningful participation of individuals from diverse racial and ethnic backgrounds. (The concept of ''diverse network'' as defined in §1388.1 of this part applies to paragraphs (b), (f), (g), and (h) of this section.)

(b) The UAP must develop a written mission statement that reflects its values and promotes the goals of the university in which it is located, including training, the development of new knowledge and service. The UAP's goals, objectives and activities must be consistent with the mission statement.

(c) The UAP's mission and programs must reflect a life span approach, incorporate an interdisciplinary approach and include the active participation of individuals with developmental disabilities and their families.

(d) The UAP programs must address the needs of individuals with developmental disabilities, including individuals with developmental disabilities who are unserved or underserved, in institutions, and on waiting lists.

(e) The UAP's mission must reflect a commitment to culturally competent attitudes and practices, which are in response to local culture and needs.

(f) The UAP's mission must reflect its unique role as a bridge between university programs, individuals with developmental disabilities and their families, service agencies and the larger community.

(g) The UAP's goals, objectives, and activities must be consistent with the mission statement and use capacity building strategies to address State's needs.

(h) The UAP's goals, objectives, and activities must reflect interagency collaborations and strategies to effect systemic change within the university and in State and local communities and service systems.

§ 1388.4 Program criteria—governance and administration.

(a) Introduction to governance and administration: The UAP must be associated with, or an integral part of, a university and promote the independence, productivity, integration, and inclusion of individuals with developmental disabilities and their families. (The concept of ''diverse network'' as defined in §1388.1 of this part applies to paragraphs (b), (c), (d), (i), and (l) of this section.)

(b) The UAP must have a written agreement or charter with the university that specifies the UAP designation as an official university component, the relationships between the UAP and other university components, the university commitment to the UAP, and the UAP commitment to the university.

(c) Within the university, the UAP must maintain the autonomy and organizational structure required to carry out the UAP mission and provide for the mandated activities.

(d) The UAP must report directly to a University administrator who will represent the interests of the UAP within the University.

(e) The University must demonstrate its support for the UAP through the commitment of financial and other resources.

(f) UAP senior professional staff must hold faculty appointments in appropriate academic departments of the host or an affiliated university, consistent with university policy. UAP senior professional staff contribute to the university by participation on university committees, collaboration with other university departments, and other university community activities.

(g) UAP faculty and staff must represent the broad range of disciplines and backgrounds necessary to implement the full inclusion of individuals with developmental disabilities in all aspects of society, consonant with the spirit of the Americans with Disabilities Act (ADA).

(h) The UAP must meet the requirements of section 109 of the Act [42 U.S.C. 6008] regarding affirmative action. The UAP must take affirmative action to employ and advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices.

(i) The management practices of the UAP, as well as the organizational structure, must promote the role of the UAP as a bridge between the University and the community. The UAP must actively participate in community networks and include a range of collaborating partners.

(j) The UAP's Consumer Advisory Committee must meet regularly. The membership of the Consumer Advisory Committee must reflect the racial and ethnic diversity of the State or community in which the UAP is located. The deliberations of the Consumer Advisory Committee must be reflected in UAP policies and programs.

(k) The UAP must maintain collaborative relationships with the State Developmental Disabilities Council and the Protection and Advocacy agency. In addition, the UAP must be a member of the State Developmental Disabilities Council and participate in Council meetings and activities, as prescribed by the Act.

(l) The UAP must maintain collaborative relationships and be an active participant with the UAP network and individuals, organizations, State agencies and Universities.

(m) The UAP must demonstrate the ability to leverage resources.

(n) The UAP must have adequate space to carry out the mandated activities.

(o) The UAP physical facility and all program initiatives conducted by the UAP must be accessible to individuals with disabilities as provided for by section 504 of the Rehabilitation Act and Titles II and III of the Americans with Disabilities Act.

(p) The UAP must integrate the mandated core functions into its activities and programs and must have a written plan for each core function area.

(q) The UAP must have in place a long range planning capability to enable the UAP to respond to emergent and future developments in the field.

(r) The UAP must utilize state-of-the-art methods, including the active participation of individuals, families and other consumers of UAP programs and services to evaluate programs. The UAP must refine and strengthen its programs based on evaluation findings.

(s) The UAP Director must demonstrate commitment to the field of developmental disabilities and leadership and vision in carrying out the mission of the UAP.

§ 1388.5 Program criteria—preparation of personnel.

(a) Introduction to preparation of personnel: UAP interdisciplinary training programs reflect state-of-the-art practices and prepare personnel concerned with developmental disabilities to promote the independence, productivity, integration and inclusion of individuals with developmental disabilities and their families.

(b) UAP interdisciplinary training programs must be based on identified personnel preparation needs and have identified outcomes that are consistent with the mission and goals of the UAP.

(c) The interdisciplinary training process, as defined by the UAP, must reflect a mix of students from diverse academic disciplines/academic programs and cultures that reflect the diversity of the community. Faculty represent a variety of backgrounds and specialties, including individuals with disabilities and family members, and a variety of learning experiences, as well as reflecting the cultural diversity of the community. Trainees must receive academic credit as appropriate for participation in UAP training programs.

(d) Preservice training must be integrated into all aspects of the UAP, including community training and technical assistance, direct services (if provided), and dissemination.

(e) Trainees must be prepared to serve in a variety of roles, including advocacy and systems change. The UAP must encourage graduates to work in situations where they will promote the independence, productivity, integration and inclusion of individuals with developmental disabilities and their families.

(f) The UAP must influence University curricula to prepare personnel who, in their future career in a broad range of social and community roles, will contribute to the accommodation and inclusion of individuals with developmental disabilities, as mandated in the Americans with Disabilities Act.

(g) The UAP core curriculum must incorporate cultural diversity and demonstrate cultural competence. Trainees must be prepared to address the needs of individuals with developmental disabilities and their families in a culturally competent manner.

(h) The UAP core curriculum must prepare trainees to be active participants in research and dissemination efforts. In addition, the curriculum must prepare trainees to be consumers of research as it informs practice and policy.

§ 1388.6 Program criteria—services and supports.

(a) Introduction to services and supports: The UAP engages in a variety of system interventions and may also engage in a variety of individual interventions to promote independence, productivity, integration and inclusion of individuals with developmental disabilities and their families.

(b) UAP community training and technical assistance activities must:

(1) Use capacity building strategies to strengthen the capability of communities, systems and service providers;

(2) Plan collaboratively, including the participation of individuals with developmental disabilities and their families;

(3) Target to a wide range of audiences, including individuals with disabilities, family members, service and support personnel, and community members;

(4) Plan and be structured in a manner that facilitates the participation of targeted audiences; and

(5) Address the unique needs of individuals with developmental disabilities and their families from diverse cultural and ethnic groups who reside within the geographic locale.

(c) Direct Services. These requirements apply only where direct services are offered.

(1) A UAP must integrate direct services and projects into community settings. These services may be provided in a service delivery site or training setting within the community including the university. Direct service projects may involve interdisciplinary student trainees, professionals from various disciplines, service providers, families and/or administrators. Direct

services must be extended, as appropriate, to include adult and elderly individuals with developmental disabilities. The UAP must maintain cooperative relationships with other community service providers, including specialized state and local provider agencies.

(2) Services and projects provided in community-integrated settings are to:

(i) Be scheduled at times and in places that are consistent with routine activities within the local community; and

(ii) Interact with and involve community members, agencies, and organizations.

(3) The bases for the services or project development must be:

(i) A local or universal need that reflects critical problems in the field of developmental disabilities; or

(ii) An emerging, critical problem that reflects current trends or anticipated developments in the field of developmental disabilities.

(4) State-of-the-art and innovative practices include:

(i) Services and project concepts and practices that facilitate and demonstrate independence for the individual, community integration, productivity, and human rights;

(ii) Practices that are economical, accepted by various disciplines, and highly beneficial to individuals with developmental disabilities, and that are integrated within services and projects;

(iii) Innovative cost-effective concepts and practices that are evaluated according to accepted practices of scientific evaluation;

(iv) Research methods that are used to test hypotheses, validate procedures, and field test projects; and

(v) Direct service and project practices and models that are evaluated, packaged for replication and disseminated through the information dissemination component.

§1388.7 Program criteria—dissemination.

(a) Introduction to dissemination: The UAP disseminates information and research findings, including the empirical validation of activities related to training, best practices, services and supports, and contributes to the development of new knowledge. Dissemination activities promote the independence, productivity, integration and inclusion of individuals with developmental disabilities and their families.

(b) The UAP must be a resource for information for individuals with developmental disabilities and their families, community members, State agencies and other provider and advocacy organizations, produce a variety of products to promote public awareness and visibility of the UAP, and facilitate replication of best practices.

(c) Specific target audiences must be identified for dissemination activities and include individuals with developmental disabilities, family members, service providers, administrators, policy makers, university faculty, researchers, and the general public.

(d) UAP dissemination activities must be responsive to community requests for information and must utilize a variety of networks, including State Developmental Disabilities Councils, Protection and Advocacy agencies, other University Affiliated Programs, and State service systems to disseminate information to target audiences.

(e) The process of developing and evaluating materials must utilize the input of individuals with developmental disabilities and their families.

(f) The values of the UAP must be reflected in the language and images used in UAP products.

(g) Dissemination products must reflect the cultural diversity of the community.

(h) Materials disseminated by the UAP must be available in formats accessible to individuals with a wide range of disabilities, and appropriate target audiences.

(i) The UAP must contribute to the development of the knowledge base through publications and presentations, including those based on research and evaluation conducted at the UAP.

§1388.8 [Reserved]

§1388.9 Peer review.

(a) The purpose of the peer review process is to provide the Commissioner,

ADD, with technical and qualitative evaluation of UAP applications, including on-site visits or inspections as necessary.

(b) Applications for funding opportunities under part D, Section 152 of the Act, must be evaluated through the peer review process.

(c) Panels must be composed of non-Federal individuals who, by experience and training, are highly qualified to assess the comparative quality of applications for assistance.

EFFECTIVE DATE NOTE: At 61 FR 51163, Sept. 30, 1996, part 1388 was revised, effective Oct. 30, 1996. For the convenience of the user, the text remaining in effect until Oct. 30, 1996, is set forth as follows:

PART 1388—THE UNIVERSITY AFFILIATED PROGRAMS

Sec.

AUTHORITY: 42 U.S.C. 6063 et. seq.

SOURCE: 52 FR 44847, Nov. 20, 1987, unless otherwise noted.

EDITORIAL NOTE: For nomenclature changes to this part, see 54 FR 47985, Nov. 20, 1989.

§ 1388.1 Definitions.

For purposes of this part:

Program criteria means a statement of the Department's expectation regarding the direction and desired outcome of the University Affiliated Programs operation. The program criteria will be used for qualitative evaluation, and also include measurements of program outcome.

Qualitative criteria means desired component and attributes which are UAP program requirements for prescribed areas.

Measurements of program outcome means a specific number of outcomes in a prescribed area. Measurements of program outcome can be aggregated and reported across all UAPs or used as management and evaluation tools in individual programs.

§ 1388.2 Program criteria—purpose.

The program criteria will be used to assess the quality of the University Affiliated Programs (UAP). Compliance with the program criteria is a prerequisite for the minimum funding level of a UAP. However, compliance with the program criteria, does not, by itself, constitute an assurance of funding.

§ 1388.3 Program criteria—administration.

(a) *Governance.* A UAP must be an integral component of a university but maintain the autonomy required to carry out the UAP mission and provide for the mandated activities as set forth in section 102(13) and section 151 of the Act (exemplary services, interdisciplinary training, technical assistance and information dissemination). The UAP must use management practices that provide direction to professionals, and parents of persons with developmental disabilities, paraprofessionals and volunteers for the UAP. The UAP must also promote the visibility of the UAP, and the integration of the program components. Management practices must facilitate cooperative relationships both within and outside the university community that further the UAP mission, aid persons with developmental disabilities and improve the field of developmental disabilities.

(b) *University relationship.* (1) The UAP must have a written agreement or charter with the university that specifies the UAP designation as an official university component, the relationships between the UAP and other university components, the university commitment to the UAP, and the UAP commitment to the university. The written agreement or charter will be required on a one-time only basis and would remain in effect unless changes occur which affect the relationship of the UAP and the university.

(2) The UAP must be responsible to and report directly to a university administrator who will represent the interests of the UAP within the university. The administrator must support and represent the UAP in operation and planning and in the training of university students, professionals, parents and the community.

(3) The UAP must show evidence that it contributes to the university's mission in the form of public relations, university instruction, continuing education, and joint development of new programs and grants.

(c) *Administration.* (1) The UAP must be managed by a person who has adequate background in a discipline relevant to the goals of the UAP, evidence of commitment to the field of developmental disabilities, and functional competence to carry-out the mission of the UAP.

(2) Directors, administrators, and middle managers of the UAP must work with a variety of professionals and non-professionals within the university and across levels of the service system to carry-out the UAP mission.

(3) A UAP must maintain a mechanism to identify and successfully compete for funding opportunities other than those under the Act.

(d) *Organization.* (1) A UAP must be represented and fully participate in all meetings and activities of the State Planning Council that are prescribed by the Act.

(2) A UAP's mission must reflect legislative requirements, special needs of persons of various ages with developmental disabilities and the needs of those who work in the field and who are concerned about persons with developmental disabilities.

(3) A UAP must develop a plan which includes the goals, objectives and timelines for UAP services, special projects, training, technical assistance, information dissemination and research activities that includes a continuous, ongoing assessment of its program and activities.

(e) *Funding.* A UAP must maintain an annual operational budget and use accepted accounting procedures to administer funds.

(f) *Cooperative relationships.* (1) A UAP must maintain cooperative relationships with the State Developmental Disability Council and the Protection and Advocacy system.

(2) A UAP must maintain cooperative relationships with the UAP network and individuals, organizations, and universities to enhance quality of life for persons with developmental disabilities and to improve the field of developmental disabilities.

(g) *Personnel policies.* (1) In order to promote the interdisciplinary nature of the UAP mission, a UAP must have on staff, or have available, adjunct professors, consultants, or experts in a broad range of disciplines, including education, health, psychology and social work.

(2) A UAP must inform staff of and implement university policies.

(3) A UAP must supplement university policies that enhance professional growth and support research.

(4) A UAP must take affirmative action to employ and advance in employment qualified individuals with developmental disabilities.

(h) *Physical facility.* (1) A UAP must be fully accessible to the handicapped in accordance with section 504 of the Rehabilitation Act.

(2) A UAP must have adequate space to carry out the mandated activities.

(3) Space that was constructed with Federal funds must be used for its intended UAP purpose pursuant to 45 CFR 1385.5 and 1385.7.

(i) *Measurements of program outcome.* Measures of program outcome include:

(1) Number of UAP staff that operate the center identified by name, discipline, percentage of time working on UAP grant, and percentage of time working on other activities within the university.

(2) Amount of university financial and other resources that supplement the UAP.

(3) Total amount of UAP funds which include the amount of the ADD grant and funds from all other sources.

§ 1388.4 Program criteria—services.

(a) *Exemplary Services.* A UAP must integrate exemplary services and projects into community settings. Exemplary services are based on emerging or continuing needs and new, innovative concepts or practices. These services may be provided in a service delivery site or training setting within the community, including the university. Exemplary service projects may involve interdisciplinary student trainees, professionals from various disciplines, service providers, families and/or administrators. Exemplary services must be extended, as appropriate, to include adult and elderly persons with developmental disabilities and also to support the independence, productivity, community integration and human rights of developmentally disabled individuals.

(b) *Community-integrated services.* The following are criteria for evaluating community-integrated services:

(1) Services and projects are scheduled at times and in places that are consistent with routine activities within the local community.

(2) Services or projects interact with and involve community members, agencies, and organizations.

(c) *Bases for services or project development.* The bases for the services or project development must be:

(1) A local or universal need that reflects critical problems in the field of developmental disabilities; or

(2) An emerging, critical problem that reflects current trends or anticipated developments in the field of developmental disabilities.

(d) *State-of-the-art and innovative practices.* (1) Service and project concepts and practices must facilitate and demonstrate independence for the individual, community integration, productivity and human rights.

(2) Practices that are economical, accepted by various disciplines, and highly beneficial to persons who are developmentally disabled, must be integrated within services and projects.

(3) The design of innovative cost-effective concepts and practices must be evaluated according to accepted practices of scientific evaluation.

(4) Research methods must be used to test hypotheses, validate procedures, and field test products.

(5) Exemplary service and project practices and models must be evaluated, packaged for replication and disseminated through the information dissemination component.

(e) *Demonstration and training.* (1) UAPs must disseminate information (brochures and professional articles) to State Developmental Disabilities Councils, the State Administering Agencies, the State Protection and Advocacy Agencies, other public and private agencies serving persons with developmental disabilities and private citizens. This information must describe exemplary services and projects and be made available for demonstration and training.

(2) A variety of individuals must be trained within exemplary services and projects. They include long-term and intermediate interdisciplinary trainees and inservice trainees. The latter group could include service providers, families, and administrators.

(f) *Measurements of program outcome.* Measures of program outcome include:

(1) The total number of clients served by category of service; and

(2) The amount of related research evaluation and dissemination conducted.

§ 1388.5 Program criteria—training.

(a) *Organization.* (1) To ensure quality comprehensive interdisciplinary training, professional staff representing the major disciplines of education, health, psychology and, social work, and holding appropriate university appointments, must direct the interdisciplinary training program.

(2) The focus of training must be interdisciplinary service and treatment of persons of various ages with developmental disabilities and their families.

(3) Training must be integrated with exemplary services provided by or affiliated with the UAP.

(b) *Outcome of interdisciplinary training.* (1) Training must develop competencies related to developmental characteristics and assessment of persons with developmental disabilities of various ages.

(2) Training must develop an understanding of various disciplines' roles, diagnostic and evaluation practices, and treatment procedures.

(3) Training must promote understanding and use of the values, knowledge, methods, and skills of the major professions of education, health, psychology and social work and other appropriate disciplines.

(4) Training must include training and practicum in the interdisciplinary team process.

(5) Training must address services and treatment for various groups.

(6) Optional training must address program evaluation and research methods applicable to developmental disability programs.

(7) Optional training must address leadership development issues such as policy analysis and management.

(c) *Long-term interdisciplinary training.* (1) To develop leaders in serving individuals with developmental disabilities, a UAP must recruit students of high achievement from major disciplines into a program that provides long-term training (300 or more hours) in a one-year reporting period.

(2) Each long-term trainee must have planned didactic instruction and clinical practical experiences to be undertaken in a one-year reporting period, including experience with an interdisciplinary team.

(3) Training activities must cover the nature and assessment of developmental disabilities and at least three of the following services: prevention and detection, individual program planning and case management, developmental services, and individual and family support services.

(4) Training activities must cover at least two of the following settings: natural home, supervised living arrangements, residential treatment centers, nonresidential treatment settings, educational and employment settings.

(5) Training activities must cover a range of disabilities and impairments.

(6) Trainees must receive credit, as appropriate, for training completed at the UAP that is performed as part of a program of course work administered by the university or any of its divisions.

(7) Training activities must include:

(i) Instruction in the interdisciplinary team process,

(ii) Experiences as a team member, and

(iii) Experiences as a team leader.

(d) *Intermediate interdisciplinary training.* (1) Students who receive intermediate interdisciplinary training (160 to 299 hours) must be recruited from various disciplines to provide services to persons with developmental disabilities as a part of generic or special services.

(2) Each trainee must have planned instruction and practical experiences, including experience with an interdisciplinary team.

(3) Training activities must cover the nature and assessment of developmental disabilities and at least three of the following services: Prevention and detection, individual program planning and case management, developmental services, and individual and family support services.

(4) Trainees must receive credit, as appropriate, for training completed at the UAP performed as part of a program of course work administered by university or any of its divisions.

(e) *Short-term special purpose interdisciplinary training.* A variety of training experiences designed to improve or expand services to persons with developmental disabilities and their families, including workships, courses, lectures, and other didactic experiences, must be provided to a variety of individuals who may or do serve individuals of various ages with developmental disabilities.

(f) *Training provided by the UAP shall be relevant to community needs.* (1) A UAP must determine and set priorities for training based on the needs of the community.

(2) Training priorities must be established in cooperation with State Developmental Disabilities councils, State manpower councils, the State Mental Retardation/Developmental Disability Agency and other relevant local, State and Federal agencies.

(3) Training priorities must consider national manpower needs with particular attention to the following areas:

(i) Early intervention programs;

(ii) Programs for elderly persons with developmental disabilities; and

(iii) Community based programs.

(g) *The interdisciplinary training program must be evaluated to improve it.* (1) Student achievement of program goals must be evaluated.

(2) The degree to which the program is achieving its stated goals must be evaluated.

(3) Evaluation must be conducted to develop and assess effective interdisciplinary strategies and procedures.

(4) The extent to which training is satisfactorily addressing the needs of the community must be systematically evaluated.

(h) *Measurements of program outcome.* Measures of program outcome include:

(1) Number of long-term interdisciplinary trainees; number of intermediate interdisciplinary trainees; and number of special trainees completing training.

(2) Number of workshops or training sessions provided; and

(3) Number and type of disciplines of participants involved in each category of training.

[52 FR 44847, Nov. 20, 1987, as amended at 54 FR 47985, Nov. 20, 1989]

§ 1388.6 Program criteria—technical assistance.

(a) *Technical assistance.* A UAP must provide technical assistance to individuals and organizations responsible for the independence, productivity, community integration, and human rights of individuals with developmental disabilities. Technical assistance must be based on state-of-the-art practices and new, innovative practices and models found within exemplary services. Technical assistance must also be based on special needs or emerging problems that are identified by the UAP, organizations or individuals concerned with persons with developmental disabilities.

(b) *Established and planned technical assistance.* (1) Technical assistance must be an integral part of a UAP.

(2) Adequate resources and personnel must be assigned.

(3) Personnel assigned must be specified and be either UAP staff who solely develop technical assistance products and provide technical assistance; or a roster of experts that could be used through consultation.

(4) The UAP must identify potential target audiences and needs.

(5) The UAP must have a system (electronic mail, mailing list) to inform target audiences about technical assistance availability.

(6) The UAP must evaluate and improve technical assistance on an ongoing basis.

(c) *Technical assistance training.* (1) Technical assistance activities must be used as a training opportunity for UAP trainees.

(2) The experience, observations, and testing of the technical assistance provision must be used to refine UAP training.

(d) *Measurements of program outcome.* Measures of program outcome include:

(1) Number of government agencies, service providers and professional organizations to whom the UAP provides technical assistance.

(2) Total hours of technical assistance provided by type (e.g., workshops, consultation, inservice training) and topic.

(3) Number of trainee hours involved in technical assistance activities.

§ 1388.7 Program criteria—information dissemination.

(a) *Information and dissemination.* A UAP must disseminate information products that enhance the quality of life of persons with developmental disabilities. The UAP must disseminate information that is based on exemplary services and projects, interdisciplinary training, UAP products and current developments related to the field of developmental disabilities. Information shall be disseminated to target audiences within the field of developmental disabilities, to persons with developmental disabilities and their families, and to other concerned persons within the general public.

(b) *Information and Dissemination Plan.* (1) An information component or activities must be an integral part of a UAP.

(2) Adequate resources and personnel must be assigned to information dissemination objectives.

(c) *Target audiences for information dissemination.* (1) Specific target audiences must be identified for information dissemination. Target audiences may include persons with

developmental disabilities and their families, service providers, administrators, policymakers, peers, researchers, and the general public.

(2) UAPs must have a system (mailing lists, electronic mail, etc.) to disseminate information to target audiences.

(3) A UAP must use existing systems (the UAP network, professional journals, publishers) to disseminate information.

(d) *Information products.* (1) Information products must be developed and packaged (articles, procedures manuals newsletters) for specific target audiences.

(2) Information products must be based on innovative ideas and practices identified or developed within exemplary services, interdisciplinary training, research, evaluation and technical assistance activities.

(3) Information products must be based on current developments in the field of developmental disabilities and must facilitate independence, productivity and integration into the community for persons of various ages with developmental disabilities.

(e) *Measurements of program outcome.* Measures of program outcome include:

(1) Number of individuals or organizations receiving information about the UAP's exemplary services, demonstrations, training, technical assistance, product and information availability;

(2) Number of individuals or organizations receiving information on current research and new, innovative practices by other individuals and organizations;

(3) Number of researchers and government agencies to whom information was presented about current service, training, and research needs;

(4) Number of individuals and agencies receiving information related to the UAP mission; and

(5) Number of individuals (professionals, consumers, administrators, policymakers, the general public) presented information as part of symposia or special purpose presentations.

§ 1388.8 Use of program criteria for Satellite Centers.

A Satellite Center must specify which activities, as defined in section 102(12) of the Act, it chooses to perform. The satellite center must comply with the program criteria in § 1388.3 of this part and will be subject to the program criteria which correspond to the activities it has selected under section 102(12) of the Act.

§ 1388.9 Peer review.

(a) The purpose of the peer review process is to provide the Commissioner, ADD, with technical and qualitative evaluation of UAP and Satellite Center applications.

(b) Peer review panels will evaluate all applications under Part D, Section 152, consisting of applications for:

(1) Core UAP and Satellite Center funding;

(2) Feasibility studies; and

(3) Training projects in areas of emerging national significance.

(c) Panels will be composed of individuals with expertise and experience in the field appropriate to the activities conducted by UAP and Satellite Centers.

[54 FR 47985, Nov. 20, 1989]

SUBCHAPTER J—[RESERVED]

SUBCHAPTER K—[RESERVED]

CHAPTER XVI—LEGAL SERVICES CORPORATION

PART 1600—DEFINITIONS

AUTHORITY: 42 U.S.C. 2996.

§ 1600.1 Definitions.

As used in these regulations, chapter XVI, unless otherwise indicated, the term—

Act means the Legal Services Corporation Act, Pub. L. 93–355 (1974), as amended, Pub. L. 95–222 (1977), 42 U.S.C. 2996–29961.

Appeal means any appellate proceeding in a civil action as defined by law or usage in the jurisdiction in which the action is filed.

Attorney means a person who provides legal assistance to eligible clients and who is authorized to practice law in the jurisdiction where assistance is rendered.

Control means the direct or indirect ability to determine the direction of management and policies or to influence the management or operating policies of another organization to the extent that an arm's-length transaction may not be achieved.

Corporation means the Legal Services Corporation established under the Act.

Director of a recipient means a person directly employed by a recipient in an executive capacity who has overall day-to-day responsibility for management of operations by a recipient.

Eligible client means any person determined to be eligible for legal assistance under the Act, these regulations or other applicable law.

Employee means a person employed by the Corporation or by a recipient, or a person employed by a subrecipient whose salary is paid in whole or in major part with funds provided by the Corporation.

Fee generating case means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client from public funds or from an opposing party.

Financial assistance means annualized funding from the Corporation granted under section 1006(a)(1)(A) for the direct delivery of legal assistance to eligible clients.

Legal assistance means the provisions of any legal services consistent with the purposes and provisions of the Act or other applicable law.

Outside practice of law means the provisions of legal assistance to a client who is not eligible to receive legal assistance from the employer of the attorney rendering assistance, but does not include, among other activities, teaching, consulting, or performing evaluations.

Political means that which relates to engendering public support for or opposition to candidates for public office, ballot measures, or political parties, and would include publicity or propaganda used for that purpose.

President means the President of the Corporation.

Public funds means the funds received directly or indirectly from the Corporation or a Federal, State, or local government or instrumentality of a government.

Recipient means any grantee or contractor receiving financial assistance from the Corporation under section 1006(a)(1)(A) of the Act.

Staff attorney means an attorney more than one half of whose annual professional income is derived from the proceeds of a grant from the Legal Services Corporation or is received from a recipient, subrecipient, grantee, or contractor that limits its activities to providing legal assistance to clients eligible for assistance under the Act.

Tribal funds means funds received from an Indian tribe or from a private foundation for the benefit of an Indian tribe.

[49 FR 21327, May 21, 1984, as amended at 51 FR 24827, July 9, 1986]

PART 1601—[RESERVED]

PART 1602—PROCEDURES FOR DISCLOSURE OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

Sec.

AUTHORITY: 5 U.S.C. 552 and 42 U.S.C. 2996d(g).

SOURCE: 43 FR 51785, Nov. 7, 1978, unless otherwise noted.

§ 1602.1 Purpose.

This part prescribes the procedures by which records of the Legal Services Corporation may be made available pursuant to section 1005(g) of the Legal Services Corporation Act, 42 U.S.C. 2996d(g), and the Freedom of Information Act, 5 U.S.C. 552.

[43 FR 51785, Nov. 7, 1978, as amended at 53 FR 6153, Mar. 1, 1988]

§ 1602.2 Definitions.

As used in this part—

Clerical means secretaries and clerks.

Commercial use request means request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Corporation will look to the use to which a requester will put the documents requested. When the Corporation has reasonable cause to doubt the use to which a requester will put the records sought, or where the use is not clear from the request itself, it will seek additional clarification before assigning the request to a specific category. If still in doubt, the Corporation will make the determination based on the factual circumstances surrounding the request, including the identity of the requester.

Direct costs means those expenditures which an agency actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

Duplication means the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

Educational institution means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a programs or program of scholarly research.

FOIA means the Freedom of Information Act, 5 U.S.C. 552.

Management means unit managers, office directors, and corporation officers.

Non-commercial scientific institution means an institution that is not operated on a ''commercial'' basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

Professional Staff means assistants to directors, staff attorneys, monitoring analysts, auditors, and computer programmers/analysts.

Professional Support means administrative assistants and junior accountants.

Records means books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by the Corporation in connection with the transaction of the Corporation's business and preserved by the Corporation as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Corporation, or because of the informational value of data in them. The term does not include *inter alia*, books, magazines, or other materials acquired solely for library purposes and available through any officially designated library of the Corporation.

Representative of the news media means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances when they can qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of ''freelance'' journalists, they will be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

Review means the process of examining documents located in response to a request that is for a commercial use to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

Search means all the time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. The search should be conducted in the most efficient and least expensive manner. Searches may be done manually or by computer using existing programming.

[53 FR 6153, Mar. 1, 1988]

§1602.3 Policy.

The Corporation will make records concerning its operations, activities, and business available to the public to the maximum extent reasonably possible. Records will be withheld from the public only in accordance with the FOIA and this regulation. Records that may be exempt from disclosure may be made available as a matter of discretion when disclosure is not prohibited by law, and it does not appear adverse to legitimate interests of the public, the Corporation, or any individual. The Corporation will attempt to provide assistance to requesting parties, including information about how a request may be submitted. The Corporation will act on requests for records in a timely manner.

§1602.4 Index of records.

The Corporation will maintain a current index identifying any matter within the scope of §1602.5(b)(1) through (3) which has been issued, adopted, or promulgated by the Corporation, and other information published or made publicly available. The index will be maintained and made available for public inspection and copying at the Corporation's headquarters in Washington, DC. The Corporation will provide a copy of the index on request, at a cost not to exceed the direct cost of duplication.

[43 FR 51785, Nov. 7, 1978, as amended at 53 FR 6153, Mar. 1, 1988; 53 FR 9726, Mar. 24, 1988]

§1602.5 Central records room.

(a) The Corporation will maintain a central records room at its headquarters at 400 Virginia Avenue, SW., Washington, DC 20024–2751, (202) 863–1820. This room will be supervised by a Records Officer, and will be open during regular business hours of the Corporation for the convenience of members of the public in inspecting and copying records made available pursuant to this part. Certain records, described in paragraph (b) of this section, will be regularly maintained in or in close proximity to the records room, to facilitate access thereto by any member of the public.

(b) Subject to the limitation stated in paragraph (c) of this section, there will be available in the central records room the following:

(1) All final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases;

(2) Statements of policy and interpretations adopted by the Corporation;

(3) Administrative staff manuals and instructions to the staff that affect the public;

(4) To the extent feasible, guidelines, forms, published regulations, notices, program descriptions, and other records considered to be of general interest to members of the public in understanding activities of the Corporation or in dealing with the Corporation in connection with those activities;

(5) The current index required by § 1602.4.

(c) Certain types of staff manuals or instructions, such as instructions to auditors or inspection staff, or instructions covering certain phases of contract negotiation, that deal with the performance of functions that would automatically be rendered ineffective by general awareness of the Corporation's techniques or procedures, may be exempt from mandatory disclosure even though they affect or may affect the public. These records will not be maintained in the central records room.

(d) Certain records maintained in the records room or otherwise made available pursuant to this part may be ''edited'' by the deletion of identifying details concerning individuals, to prevent a clearly unwarranted invasion of personal privacy. In such cases, the record shall have attached to it full explanation of the deletion.

[43 FR 51785, Nov. 7, 1978, as amended at 53 FR 6153, Mar. 1, 1988]

§ 1602.6 [Reserved]

§ 1602.7 Use of records rooms.

(a) Any member of the public who wishes to inspect or copy records regularly maintained in the central records room may secure access to these records by presenting himself or herself at the records room during business hours. No advance notice or appointment is required.

(b) Each records room will also be available to any member of the public to inspect and copy records which are not regularly maintained in such room. To obtain such records a person should present his or her request identifying the records to the Records Officer. Because it will sometimes be impossible to produce these records or copies of them on short notice, a person who wishes to use records room facilities to inspect or copy such records is advised to arrange a time in advance, by telephone or letter request made to the Records Officer of the facility which he or she desires to use. Persons submitting requests by telephone will be advised by the Records Officer or another designated employee whether a written request would be advisable to aid in the identification and expeditious processing of the records sought. Persons submitting written requests should identify the records sought in the manner provided in § 1602.8(b) and should indicate whether they wish to use the records room facilities on a specific date. The Records Officer will endeavor to advise the requesting party as promptly as possible if, for any reason, it may not be possible to make the records sought available on the date requested.

[43 FR 51785, Nov. 7, 1978, as amended at 53 FR 6153, Mar. 1, 1988]

§ 1602.8 Availability of records on request.

(a) In addition to the records made available through the records rooms, the Corporation will make such records available to any person in accordance with paragraphs (b) and (c) of this section, unless it is determined thatsuch records should be withheld and are exempt from mandatory disclosure under the FOIA and § 1602.9 of these regulations.

(b) *Requests.* (1) A request will be acceptable if it identifies a record with sufficient particularity to enable officials of the Corporation to located the record with a reasonable amount of effort. Requests seeking records within a reasonably specific category will be deemed to conform to the statutory requirement of a request which ''reasonably describes'' such records if professional employees of the Corporation who are familiar with the subject area of the request would be able, with a reasonable amount of effort, to determine which particular records are encompassed within the scope of the request, and to search for, locate, and

collect the records without unduly burdening or materially interfering with operations because of the staff time consumed or the resulting disruption of files. If it is determined that a request does not reasonably describe the records sought as specified in this paragraph, the response denying the request on that ground shall specify the reasons why the request failed to meet the requirements of this paragraph and shall extend to the requesting party an opportunity to confer with Corporation personnel in order to attempt to reformulate the request in a manner that will meet the needs of the requesting party and the requirements of this paragraph.

(2) To facilitate the location of records by the Corporation, a requesting party should try to provide the following kinds of information, if known: (i) The specific event or action to which the record refers; (ii) the unit or program of the Corporation which may be responsible for or may have produced the record; (iii) the date of the record or the date or period to which it refers or relates; (iv) the type of record such as an application, a grant, a contract, or a report; (v) personnel of the Corporation who may have prepared or have knowledge of the record; (vi) citations to newspapers or publications which have referred to the record.

(3) The Corporation is not required to create a record to satisfy a request for information. When the information requested exists in the form of several records at several locations, the requesting party should be referred to those sources if gathering the information would unduly burden or materially interfere with operations of the Corporation.

(4) All requests for records under this section shall be made in writing, with the envelope and the letter clearly marked: ''Freedom of Information Request.'' All such requests shall be addressed to the Records Officer at the headquarters of the Corporation or at any regional records office. Any request not marked and addressed as specified in this paragraph will be so marked by Corporation personnel as soon as it is properly identified, and forwarded immediately to the Records Officer. A request improperly addressed will not be deemed to have been received for purposes of the time period set forth in paragraph (c) of this section until forwarding to the appropriate office has been effected. On receipt of an improperly addressed request, the Records Officer shall notify the requesting party of the date on which the time period commenced to run.

(5) A person desiring to secure copies of records by mail should write to the Records Officer at the headquarters in Washington, DC. The request must identify the records of which copies are sought in accordance with the requirements of this paragraph, and should indicate the number of copies desired. Fees may be required to be paid in advance in accordance with §1602.13. The requesting party will be advised of the estimated fee, if any, as promptly as possible. If a waiver of fees is requested, the grounds for such request should be included in the letter.

(c) The Records Officer, upon request for any records made in accordance with this part, shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requesting party within 10 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of such request, except for unusual circumstances in which case the time limit may be extended for not more than 10 working days by written notice to the requesting party setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. In determining whether to issue a notice of extension of time for a response to a request beyond the 10-day period, Corporation officials shall consult with the Office of the General Counsel. As used herein, ''unusual circumstances'' are limited to the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct

records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the Corporation having substantial subject matter interest therein.

(d) If no determination has been dispatched at the end of the 10-day period, or the last extension thereof, the requesting party may deem his request denied, and exercise a right of appeal in accordance with § 1602.12. When no determination can be dispatched within the applicable time limit, the Records Officer shall nevertheless continue to process the request. On expiration of the time limit, he shall inform the requesting party of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to treat the delay as a denial and to appeal to the President in accordance with § 1602.12; and he may ask the requesting party to forego appeal until a determination is made.

(e) After it has been determined that a request will be granted, the Corporation will act with diligence in providing a substantive response.

§ 1602.9 Invoking exemptions to withhold a requested record.

(a) A requested record of the Corporation may be withheld from public disclosure only if one or more of the following categories exempted by the FOIA apply:

(1) Matter which is related solely to the internal personnel rules and practices of the Corporation;

(2) Matter which is specifically exempted from disclosure by statute;

(3) Trade secrets and commercial or financial information obtained from a person and priviledged or confidential;

(4) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Corporation;

(5) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(6) Records or information compiled for enforcing the Act or any other law, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonbly be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(b) In the event that one or more of the above exemptions applies, any reasonably segregable portion of a record shall be provided to the requesting party after deletion of the portions that are exempt. In appropriate circumstances, subject to the discretion of Corporation officials, it may be possible to provide a requesting party with: (1) A summary of information in the exempt portion of a record; or

(2) An oral description of the exempt portion of a record. In determining whether any of the foregoing techniques should be employed in accordance with this paragraph or whether an exemption should be waived in accordance with paragraph (c) of this section, Corporation officials shall consult with the Office of General Counsel. No requesting party shall have a right to insist that any or all of the foregoing techniques should be employed in order to satisfy a request.

(c) Records that may be exempted from disclosure pursuant to paragraph (a) of this section may be made available as a matter of discretion when disclosure is not prohibited by law, if it

does not appear adverse to legitimate interests of the Corporation, the public, or any person.

[43 FR 51785, Nov. 7, 1978, as amended at 53 FR 6153, Mar. 1, 1988]

§ 1602.10 Officials authorized to grant or deny requests for records.

The General Counsel shall furnish necessary advice to Corporation officials and staff as to their obligations under this part and shall take such other actions as may be necessary or appropriate to assure a consistent and equitable application of the provisions of this part by and within the Corporation. Other officials of the Corporation shall consult with the General Counsel before denying requests under this part, or before granting requests for waiver or modified application of an exemption or for categories of documents which the General Counsel determines may present special or unusual problems. The General Counsel and, subject to consultation with him where required, the Records Officer is authorized to grant or deny requests under this part.

[43 FR 51785, Nov. 7, 1978, as amended at 53 FR 6154, Mar. 1, 1988]

§ 1602.11 Denials.

(a) A denial of a written request for a record that complies with the requirements of § 1602.8 shall be in writing and shall include the following:

(1) A reference to the applicable exemption or exemptions in § 1602.9(a) upon which the denial is based;

(2) An explanation of how the exemption applies to the requested records;

(3) A statement explaining why it is deemed unreasonable to provide segregable portions of the record after deleting the exempt portions;

(4) The name and title of the person or persons responsible for denying the request; and

(5) An explanation of the right to appeal the denial and of the procedures for submitting an appeal, including the address of the official to whom appeals should be submitted.

(b) Whenever the Corporation makes a record available subject to the deletion of a portion of the record, such action shall be deemed a denial of a record for purposes of paragraph (a) of this section.

(c) All denials shall be treated as opinions and shall be maintained and indexed accordingly, subject only to the necessity of deleting identifying details the release of which would constitute a clearly unwarranted invasion of personal privacy.

§ 1602.12 Appeals of denials.

(a) Any person whose written request has been denied is entitled to appeal the denial within ninety days by writing to the President of the Corporation at the headquarters in Washington, DC. The envelope and letter should be clearly marked: ''Freedom of Information Appeal.'' An appeal need not be in any particular form, but should adequately identify the denial, if possible, by describing the requested record, identifying the official who issued the denial, and providing the date on which the denial was issued.

(b) No personal appearance, oral argument, or hearing will ordinarily be permitted on appeal of a denial. Upon request and a showing of special circumstances, however, this limitation may be waived and an informal conference may be arranged with the President, or the President's specifically designated representative, for this purpose.

(c) The decision of the President on an appeal shall be in writing and, in the event the denial is in whole or in part upheld, shall contain an explanation responsive to the arguments advanced by the requesting party, the matters described in § 1602.11(a) (1) through (4), and the provisions for judicial review of such decision under section 552(a)(4) of the FOIA. The decision shall be dispatched to the requesting party within twenty working days after receipt of the appeal, unless an additional period is justified pursuant to § 1602.8(c) and such period taken together with any earlier extension does not exceed ten days. The President's decision shall constitute the final action of the Corporation. All such decisions shall be treated as final opinions under § 1602.5(b).

§ 1602.13 Fees.

(a) Information provided routinely in the normal course of doing business will be provided at no charge.

(b) Fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(c) Fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or non-commercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(d) For any request not described in paragraph (b) or (c) of this section, fees shall be limited to reasonable standard charges for document search and duplication.

(e) The schedule of charges for services regarding the production or disclosure of the Corporation's records is as follows:

(1) Search for records and production of information is based on the following schedule of direct labor charges:

(i) Clerical=$2.77/quarter hour

(ii) Professional Support=$3.45/quarter hour

(iii) Professional Staff=$4.99/quarter hour

(iv) Management=$8.37/quarter hour.

(2) Computer time: Actual charges as incurred.

(3) Reproduction, duplication, or copying of records: $0.10 per page.

(4) Reproduction, duplication, or copying of microfilm: Actual charges as incurred.

(5) Certification of true copies: $1.00 each.

(6) Packing and mailing records: Actual charges as incurred.

(7) Special delivery or express mail: Actual charges as incurred.

(f) Documents shall be furnished without any charge or at a charge reduced below the fees established under paragraph (e) of this section if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(1) In order to determine whether disclosure of the information ''is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government,'' the Corporation will consider the following four criteria.

(i) The subject of the request: Whether the subject of the requested records concerns ''the operations or activities of the government;''

(ii) The informative value of the information to be disclosed: Whether the disclosure is ''likely to contribute'' to an understanding of government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to ''public understanding''; and

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute ''significantly'' to public understanding of government operations or activities.

(2) In order to determine whether disclosure of the information ''is not primarily in the commercial interest of the requester,'' the Corporation will consider the following two factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is ''primarily in the commercial interest of the requester.''

(3) These fee waiver/reduction provisions will be subject to appeal in the same manner as appeals from denial under § 1602.12.

(g) No fee will be charged under this section—

(1) If the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(2) For any request described in paragraph (b), (c), or (d) of this section for the first two hours of search time or for the first one hundred pages of duplication.

(h) No requester will be required to make an advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion or the Corporation has determined that the fee will exceed $250.

(1) In the event that a requester has previously failed to pay a required fee (within 30 days of the date of billing), an advance deposit of the full amount of the anticipated fee together with the fee then due plus interest accrued may be required. The request will not be deemed to have been received by the Corporation until such payment is made.

(2) In the event that the Corporation determines that an estimated fee will exceed $250, the requesting party shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. Such notification shall be transmitted as soon as possible, but in any event within five working days, giving the best estimate then available. The notification shall offer the requesting party the opportunity to confer with appropriate representatives of the Corporation for the purpose of reformulating the request so as to meet his needs at a reduced cost. The request will not be deemed to have been received by the Corporation until an advance payment of the entire fee is made.

(i) Interest will be charged to those requesters who fail to pay the fees charged. Interest will be assessed on the amount billed, starting on the 31st day following the day on which the billing was sent. The rate charged will be as prescribed in 31 U.S.C. 3717.

(j) If the Corporation reasonably believes that a requester or group of requesters is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the Corporation shall aggregate such requests and charge accordingly.

(k) The Corporation reserves the right to limit the number of copies that will be provided of any document to any one requesting party or to require that special arrangements for duplication be made in the case of bound volumes or other records representing unusual problems of handling or reproduction.

[43 FR 51785, Nov. 7, 1978, as amended at 53 FR 6154, Mar. 1, 1988; 53 FR 9726, Mar. 24, 1988]

PART 1603—STATE ADVISORY COUNCILS

Sec.

AUTHORITY: Sec. 1004(f), 88 Stat. 379–380 (42 U.S.C. 2996c(f)).

SOURCE: 40 FR 59351, Dec. 23, 1975, unless otherwise noted.

§ 1603.1 Purpose.

The purpose of this part is to implement section 1004(f) of the Legal Services Corporation Act of 1974, 42 U.S.C. 2996c(f), which provides authority for the appointment of state advisory councils.

§ 1603.2 Definitions.

As used in this part, the term—

(a) *Act* means the Legal Services Corporation Act of 1974, Pub. L. 93–355, 88 Stat. 378, 42 U.S.C. 2996–2996*l*;

(b) *Apparent violation* means a complaint or other written communication alleging facts which, if established, constitute a violation of the Act, or any applicable rules, regulations or guidelines promulgated pursuant to the Act;

(c) *Board* means the Board of Directors of the Legal Services Corporation;

(d) *Corporation* means the Legal Services Corporation established under the Act;

(e) *Council* means a state advisory council established pursuant to Section 1004(f) of the Act;

(f) *Eligible client* means any person financially unable to afford legal assistance;

(g) *Governor* means the chief executive officer of a State;

(h) *Recipient* means any grantee, contractee, or recipient of financial assistance described in clause (A) of section 1006(a)(1) of the Act;

(i) *State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

§ 1603.3 Composition and term of office of council membership.

A council shall be composed of nine members. A majority of the members of a council shall be attorneys admitted to practice in the State. It is recommended that the remainder of the council, to the maximum extent possible, be broadly representative of persons concerned with the effective functioning of legal services programs. Membership of a council shall be subject to annual reappointment, but it is recommended that no member of a council be appointed to serve for more than three consecutive years.

§ 1603.4 Procedure for appointment of council.

At the formal request of the Board, to be made before January 14, 1976, the Governor may appoint a council for the State. Those council members who are attorneys admitted to practice in the State shall be appointed by the Governor after recommendations have been received from the State bar association. In making such appointments, it is recommended the the Governor consult with other bar associations in the State, representatives of groups concerned with the interests of recipients, eligible clients and other interested groups. It is recommended that the Governor appoint attorneys who have interest in and knowledge of the delivery of quality legal services to the poor, and that the remaining members of the council, who are not attorneys, be selected after the Governor has consulted with representatives of groups concerned with the interests of eligible clients. It is recommended that the Governor seek recommendations from recipients in the State before appointing any members to the council. Sixty days prior to the expiration of a member's term, the Governor shall notify those groups mentioned in this Section so that their recommendations may be solicited for purposes of appointment of a new member or reappointment of an incumbent member of the council.

§ 1603.5 Council purpose and duties.

(a) The purpose of the council shall be to notify the Corporation of any apparent violation as defined in § 1603.2(b) of this chapter.

(b) In fulfilling the purpose set forth in paragraph (a) of this section, the council shall forward any apparent violation to the Corporation. The Chairperson of the council shall inform the complainant, the Corporation and the recipient of any action taken on the complaint. Notification of an apparent violation forwarded by the council to the Corporation shall not necessarily constitute a position of the council concerning the apparent violation.

(c) These procedures are not exclusive. Complaints may be submitted to the Corporation, and complaints submitted to a council may be submitted to the Corporation without regard to council action. The Corporation shall inform the complainant, the council and the recipient of all action taken on the complaint.

§ 1603.6 Duties of Corporation upon receipt of notification of violation.

(a) Upon receipt of a notification of an apparent violation, the matters contained therein shall be investigated and resolved by the Corporation in accordance with the Act and rules and regulations issued thereunder.

(b) Upon receipt from a council of a notification of an apparent violation, the Corporation shall allow any recipient affected thereby a reasonable time (but in no case less than thirty days) to reply to any allegation contained in the notication.

(c) The Corporation shall inform the Chairperson of a council of the action, if any, the Corporation has taken with regard to any notification received from such council.

§ 1603.7 Organization and procedural functioning of council.

(a) Within 30 days after the appointment of the council, and annually thereafter, the Governor shall send to the Secretary of the Corporation in Washington, DC, a list of the members of the council for the State that shall include the name, address and telephone number of each council member, and indicate which members are attorneys.

(b) It is recommended that the Governor appoint from among those named to the council a Chairperson of the council.

(c) It is recommended that each council establish at its first meeting such fair and reasonable procedures for its operation as it may deem necessary to carry out the purpose set forth in § 1603.5(a) of this chapter. The procedures for operation of the council shall include provisions for notifying the appropriate regional director of the Corporation of the time and place of any meeting of the council.

(d) It is recommended that a council meet at the call of the Chairperson thereof, or at the request to the Chairperson of at least four members thereof, at such times as may be necessary to carry out its duties, but at least annually.

§ 1603.8 Corporation support of council.

(a) The Corporation shall inform the Chairperson of each council of the funds available to the council from the Corporation for actual and reasonable expenses incurred by members of the council to pursue council business.

(b) It shall be the duty of the President of the Corporation to keep the Chairperson of each council informed of the work of the Corporation.

(c) The Secretary of the Corporation shall mail annually to each recipient the name and address of the Chairperson of the appropriate council and a form of notice indicating where complaints may be sent. The recipient shall post said name and address of the Chairperson and said notice in plain public view in each office of the recipient.

§ 1603.9 Annual report of council.

On or before March 31, 1977, and on or before March 31 of each succeeding year, a council shall submit to the Corporation a report of the activities of the council during the previous calender year. The report may contain comments or suggestions regarding how best to provide high quality legal assistance to the poor, and regarding such other matters having to do with provision of legal services to eligible clients in the State as the council may deem advisable.

§ 1603.10 Multi-state recipients.

Where a recipient has offices in more than one State, the council of the State in which the apparent violation occurred has the responsibility for notifying the Corporation and the recipient at its local and administrative offices.

PART 1604—OUTSIDE PRACTICE OF LAW

Sec.

AUTHORITY: Secs. 1007(a)(4), 1008(e) (42 U.S.C. 2996f(a)(4), 2996g(e)).

SOURCE: 41 FR 18512, May 5, 1976, unless otherwise noted.

§ 1604.1 Purpose.

This part is designed to permit an attorney to comply with the reasonable demands made upon all members of the Bar and officers of the Court, so long as those demands do not hinder fulfillment of the attorney's overriding responsibility to serve those eligible for assistance under the Act.

§ 1604.2 Definitions.

(a) *Attorney,* as used in this part, means a person who is employed full time in legal assistance activities supported in major part by the Corporation, and who is authorized to practice law in the jurisdiction where assistance is rendered.

(b) *Outside practice of law* means the provision of legal assistance to a client

who is not entitled to receive legal assistance from the employer of the attorney rendering assistance, but does not include, among other activities, teaching, consulting, or performing evaluation.

§ 1604.3 General policy.

No attorney shall engage in any outside practice of law if the director of the recipient has determined that such practice is inconsistent with the attorney's full time responsibilities.

§ 1604.4 Compensated outside practice.

A recipient may permit an attorney to engage in the outside practice of law for compensation if § 1604.3 is satisfied, and

(a) The attorney is newly employed and has a professional responsibility to close cases from a previous law practice, and does so as expeditiously as possible; or

(b) The attorney is acting pursuant to an appointment made under a court rule or practice of equal applicability to all attorneys in the jurisdiction, and remits to the recipient all compensation received.

§ 1604.5 Uncompensated outside practice.

A recipient may permit an attorney to engage in uncompensated outside practice of law if § 1604.3 is satisfied, and the attorney is acting:

(a) Pursuant to an appointment made under a court rule or practice of equal applicability to all attorneys in the jurisdiction; or on behalf of;

(b) A close friend or family member; or

(c) A religious, community, or charitable group.

PART 1605—APPEALS ON BEHALF OF CLIENTS

Sec.
1605.1 Purpose.
1605.2 Definition.
1605.3 Review of Appeals.

AUTHORITY: Secs. 1007(a)(7), 1008(e), 42 U.S.C. 2996f(a)(7), 2996g(e).

SOURCE: 41 FR 18513, May 5, 1976, unless otherwise noted.

§ 1605.1 Purpose.

This part is intended to promote efficient and effective use of Corporation funds. It does not apply to any case or matter in which assistance is not being rendered with funds provided under the Act.

§ 1605.2 Definition.

Appeal means any appellate proceeding in a civil action as defined by law or usage in the jurisdiction in which the action is filed.

§ 1605.3 Review of Appeals.

The governing body of a recipient shall adopt a policy and procedure for review of every appeal to an appellate court taken from a decision of any court or tribunal. The policy adopted shall

(a) Discourage frivolous appeals, and

(b) Give appropriate consideration to priorities in resource allocation adopted by the governing body, or required by the Act, or Regulations of the Corporation; but

(c) Shall not interfere with the professional responsibilities of an attorney to a client.

PART 1606—PROCEDURES GOVERNING TERMINATION OF FINANCIAL ASSISTANCE

Sec.
1606.1 Purpose.
1606.2 Definitions.
1606.3 Grounds for termination.
1606.4 Preliminary determination.
1606.5 Informal conference.
1606.6 Initiation of proceedings.
1606.7 Presiding officer.
1606.8 Pre-hearing conference.
1606.9 Conduct of hearing.
1606.10 Burden of proof.
1606.11 Briefs and argument.
1606.12 Recommended decision.
1606.13 Final decision.
1606.14 Time extension and waiver.
1606.15 Right to counsel.
1606.16 Reimbursement.
1606.17 Interim funding.
1606.18 Termination funding.
1606.19 Notice.

AUTHORITY: Secs. 1006(b) (1) and (3), 1007(a)(1), 1007(a)(3), 1007(a)(9), 1007(d), 1008(e), 1011 Legal Services Corporation Act of 1974, as amended (42 U.S.C. 2996e(b) (1) and (3), 2996f(a) (1), (3), and (9), 2996f(d), 2996g(e), 2996j).

SOURCE: 43 FR 32770, July 28, 1978, unless otherwise noted.

§1606.1 Purpose.

By affording a recipient the opportunity for a timely, full, and fair hearing that will promote informed deliberation by the Corporation when there is reason to believe a grant or contract should be terminated, this part seeks to avoid unnecessary disruption in the delivery of legal assistance to eligible clients.

[43 FR 32770, July 28, 1978, as amended at 48 FR 54199, Nov. 30, 1983]

§1606.2 Definitions.

(a) *Termination* means a decision that financial assistance to a recipient will be permanently terminated in whole or in part prior to expiration of the recipient's current grant or contract.

(b) *Director of a recipient* means the person who has overall day-to-day responsibility for management of operations by the recipient.

(c) *Presiding Officer* means the person appointed by the President to recommend a decision that a grant or contract should be continued or terminated.

[43 FR 32770, July 28, 1978, as amended at 48 FR 54199, Nov. 30, 1983]

§1606.3 Grounds for termination.

A grant or contract may be terminated when:

(a) Termination is required by, or will implement a provision of law, a Corporation rule, regulation, guideline, or instruction that is generally applicable to all recipients of the same class or a funding policy, standard, or criterion approved by the Board, except that termination shall not be based on a Corporation rule, regulation, guideline, or instruction that was not in effect when the current grant was made or when the current contract was entered into; or

(b) There has been substantial failure by a recipient to comply with a provision of law, or a rule, regulation, or guideline issued by the Corporation, or a term or condition of a current or prior grant from contract with the Corporation. In the absence of unusual circumstances, a grant or contract shall not be terminated for this cause unless the Corporation has given the recipient notice of such failure and an opportunity to take effective corrective action; or

(c) There has been substantial failure by a recipient to use its resources to provide economical and effective legal assistance of high quality as measured by generally acepted professional standards, the provisions of the Act, or a rule, regulation or guideline issued by the Corporation. In the absence of unusual circumstances, a grant or contract shall not be terminated for this cause unless the Corporation has given the recipient notice of such failure and an opportunity to take effective corrective action.

[48 FR 54199, Nov. 30, 1983]

§1606.4 Preliminary determination.

(a) When there is reason to believe that a grant or contract should be terminated, the Corporation shall serve a written preliminary determination upon the recipient, which shall state the grounds for the proposed action, and shall identify, with reasonable specificity, any facts or documents relied upon as justification for that action.

(b) The preliminary determination shall advise the recipient that it may, within 30 days of receipt of the preliminary determination, make written request for:

(1) A hearing under this part, or

(2) An informal conference under §1606.5 of this part, with a subsequent right as there provided to request a hearing.

(c) The preliminary determination shall also advise the recipient of its right to receive interim, and to request termination, funding, under §1606.17 or §1606.18 of this part.

(d) If the recipient advises the Corporation that it will not request review, or if it fails to request review within the time prescribed in §1606.4(b) or §1606.5, the preliminary determination shall become final.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983; 50 FR 30713, July 29, 2985]

§ 1606.5 Informal conference.

On timely request by the recipient, the Corporation employee who made the preliminary determination shall promptly conduct an informal conference with the recipient at a time and place designated by the employee. The parties thereto shall exchange views, seek to narrow the issues, and explore the possibilities of settlement or compromise. At the conclusion of the conference, which may be adjourned for deliberation or consultation, the Corporation employee may, in writing, modify, withdraw, or affirm the preliminary determination. The recipient may, within 5 days thereafter, make written request for a hearing under §§ 1606.8 through 1606.14 of this part.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983]

§ 1606.6 Initiation of proceedings.

Within 10 days after receipt of a request for a hearing made under § 1606.4(b) or § 1606.5, the Corporation shall notify a recipient in writing of:

(a) The name of the presiding officer, and of the attorney who will represent the Corporation;

(b) The date, time and place scheduled for a prehearing conference, if any should be requested or ordered; and

(c) The date, time and place scheduled for the hearing.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983]

§ 1606.7 Presiding officer.

(a) The presiding officer shall be appointed by the President, and shall be a person who is familiar with legal services and supportive of the purposes of the Act, who is independent, and who is not an employee of the Corporation.

(b) Within 5 days of receipt of the notice required under § 1606.6, the recipient shall notify the Corporation if it objects to the presiding officer on the grounds that the person does not satisfy the criteria stated in § 1606.7(a), or is personally biased. The notice shall state the specific facts and documents that the recipient contends support its objection, and, if a pre-hearing conference has not been scheduled, shall request a pre-hearing conference for the purpose of presenting the objection. At the pre-hearing conference, the recipient and the Corporation may question the presiding officer for a reasonable period of time on matters relevant to the recipient's objection.

(c) The recipient shall, within 5 days following the pre-hearing conference, notify the Corporation of any further facts that it contends support its objections. The President shall, within 10 days following the pre-hearing conference, either sustain the objection and appoint a new hearing officer or overrule the objection.

(d) No objection to the appointment of a presiding officer may be made unless presented in the manner specified by this section.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983]

§ 1606.8 Pre-hearing conference.

(a) A pre-hearing conference may be ordered by the presiding officer, and shall be ordered if requested by either the recipient or the Corporation. The matters to be considered at the conference shall include:

(1) Proposals to define and narrow the issues;

(2) Efforts to stipulate the facts, in whole or in part;

(3) The probable number, identity, and order of presentation of exhibits and witnesses;

(4) On the agreement of the parties, the possibility of presenting the case on written submission or oral argument;

(5) The desirability of advance submission of some or all of the direct testimony in writing;

(6) Any necessary variation in the date, time and place of the hearing;

(7) Discussion of settlement; and

(8) Such other matters as may be appropriate.

(b) In advance of the pre-hearing conference, the presiding officer may require a party to submit a written statement discussing any matter described in paragraph (a) of this section. After the pre-hearing conference, the presiding officer may establish the procedures, consistent with this part, to be followed at the hearing.

(c) The presiding officer may, at the pre-hearing conference or at any subsequent appropriate time prior to completion of the hearing, require the Corporation or the recipient, on sufficient notice, to produce a relevant document in its possession, to make a report not unduly burdensome to prepare, or to produce a person in its employ to testify, if any might offer a relevant and substantial addition to the accuracy or completeness of the record. With the consent of the presiding officer, a party may make a written submission before the hearing.

[43 FR 32770, July 28, 1978. Redesignated at 48 FR 54199, Nov. 30, 1983]

§ 1606.9 Conduct of hearing.

(a) The hearing shall be scheduled to commence at the earliest appropriate date, ordinarily not later than 30 days after the notice required by § 1606.6, and, whenever practical, shall be held at a place convenient to the recipient and the community it serves. A hearing affecting more than one community or recipient shall be held in a single centrally located place unless the presiding officer determines that an additional hearing place is required.

(b) The presiding officer shall preside, conduct a full and fair hearing, avoid delay, maintain order, and insure that a record sufficient for full disclosure of the facts and issues is made. The hearing shall be open to the public unless, for good cause and in the interests of justice, the presiding officer shall determine otherwise.

(c) The presiding officer may allow any interested person or organization to participate in the hearing if such participation will not broaden the issues unduly or cause delay, and will aid in proper determination of the issues.

(1) A person or organization wishing to participate in a hearing shall request permission from the presiding officer, stating the reason for the request, and the nature of the evidence or argument to be offered; and shall notify the Corporation and the recipient of its request.

(2) The presiding officer shall notify the Corporation, the recipient, and the person or organization requesting participation whether the request has been granted, and in case of denial shall include a brief statement of the reasons therefor.

(3) The presiding officer may limit the scope or form of participation authorized under this paragraph.

(d) The Corporation and the recipient each may present its case by oral or documentary evidence, conduct examination and cross-examination of witnesses, examine any document submitted by another party, and submit rebuttal evidence.

(e) If a party fails, without good cause, to produce a person or document required under § 1606.8(c), the presiding officer may make an adverse finding on the fact or issue with respect to which production was required.

(f) Technical rules of evidence shall not apply. The presiding officer shall make any procedural or evidentiary ruling that may help to insure full disclosure of the facts, to maintain order, or to avoid delay. Irrelevant, immaterial, repetitious or unduly prejudicial matter may be excluded.

(g) Official notice may be taken of published policies, rules, regulations, guidelines, and instructions of the Corporation, of any matter of which judicial notice may be taken in a Federal court, or of any other matter whose existence, authenticity, or accuracy is not open to serious question.

(h) A stenographic or electronic sound record, or a summary of the hearing shall be made in a manner determined by the presiding officer, and a copy shall be made available to a party upon payment of its cost.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983; 50 FR 30713, July 29,1985]

§ 1606.10 Burden of proof.

At a hearing under § 1606.9:

(a) The Corporation shall have the obligation of proving, by a preponderance of the evidence, the existence of any disputed fact relied upon as justification for termination; and

(b) On all other issues, the Corporation shall have the obligation of establishing a substantial basis for terminating the grant or contract.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983]

§ 1606.11 Briefs and argument.

(a) Within 10 days after the close of the hearing, each party may, and, upon request of the presiding officer, shall, submit to the presiding officer, with service upon all other parties, proposed findings of fact and argument on matters of law or policy.

(b) The presiding officer may direct or permit oral argument at the close of the hearing or after submission of briefs.

[43 FR 32770, July 28, 1978. Redesignated at 48 FR 54199, Nov. 30, 1983]

§ 1606.12 Recommended decision.

(a) As soon as practicable after the hearing, and normally within 20 days after its conclusion, the presiding officer shall issue a written recommended decision.

(1) Continuing the recipient's current grant or contract, subject to any modification or condition that may be deemed necessary on the basis of information adduced at the hearing; or

(2) Terminating financial assistance to the recipient as of a particular date.

(b) The recommended decision shall contain findings of the significant and relevant facts and shall state the reasons for the decision. Findings of fact shall be based solely on the evidence adduced at the hearing or on matters of which official notice was taken.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983]

§ 1606.13 Final decision.

(a) If neither the Corporation nor the recipient requests review by the President, a recommended decision shall become final 10 days after receipt by a recipient.

(b) The recipient or the Corporation may seek review by the President of a recommended decision. A request shall be made in writing within 10 days after receipt by the party of the recommended decision, and shall state in detail the reasons for seeking review.

(c) As soon as practicable after receipt of a request for review of a recommended decision, but not later than 30 days after the completion of the hearing, the President shall adopt, modify, or reverse the recommended decision, or direct further consideration of the matter. In the event of modification or reversal, the President's decision shall conform to the requirements of § 1606.12(b).

(d) A decision by the President shall become final upon receipt by a recipient.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983; 50 FR 30713, July 29, 1985]

§ 1606.14 Time and extension and waiver.

(a) Any period of time provided in these rules may, upon good cause shown and determined, be extended:

(1) By the person making the preliminary determination, prior to the time the presiding officer is designated;

(2) By the presiding officer, prior to the issuance of a recommended decision; or

(3) By the President at any time.

(b) Requests for extensions of time shall be considered in light of the overall objective that the procedures prescribed by this part ordinarily shall be concluded within 90 days of the preliminary determination.

(c) Any other provision of these rules may be waived or modified:

(1) By the presiding officer with the assent of the recipient and of counsel for the Corporation; or

(2) By the President upon good cause shown and determined.

[43 FR 32770, July 28, 1978. Redesignated at 48 FR 54199, Nov. 30, 1983]

§ 1606.15 Right to counsel.

At a hearing under § 1606.9, the Corporation and the recipient each shall be entitled to be represented by counsel, or by another person. The attorney designated may be an employee, or may be outside counsel retained for the purpose. Unless prior written approval is received from the Corporation, the fee paid to outside counsel shall not exceed the hourly equivalent of the rate of level V of the executive schedule specified in section 5316 of title 5, United States Code.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983]

§1606.16 Reimbursement.

If the recipient's grant or contract is continued or refunding is granted after a preliminary determination has been issued under §1606.4, a recipient shall receive reimbursement by the Corporation, to the extent it has prevailed, for reasonable and actual expenses that were required in connection with proceedings under this part.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983]

§1606.17 Interim funding.

Failure by the Corporation to meet a time requirement of this part shall not entitle a recipient to continuation of its grant or contract. Pending a final determination under this part, the Corporation shall provide the recipient with interim funding necessary to maintain its current level of legal assistance activities under the act.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983]

§1606.18 Termination funding.

After a final determination to terminate a recipient's grant or contract, and without regard to whether a hearing has occurred, the Corporation may authorize temporary funding if necessary to enable a recipient to close or transfer current matters in a manner consistent with the recipient's professional responsibility to its present clients.

[43 FR 32770, July 28, 1978. Redesignated and amended at 48 FR 54199, Nov. 30, 1983]

§1606.19 Notice.

A notice required to be sent to a recipient under this part shall be sent to the director of the recipient, and may be sent to the chairperson of its governing body.

[43 FR 32770, July 28, 1978. Redesignated at 48 FR 54199, Nov. 30, 1983]

PART 1607—GOVERNING BODIES

Sec.

AUTHORITY: 42 U.S.C. 2996f(c); Pub. L. 103–317.

SOURCE: 59 FR 65254, Dec. 19, 1994, unless otherwise noted.

§1607.1 Purpose.

This part is designed to insure that the governing body of a recipient will be well qualified to guide a recipient in its efforts to provide high-quality legal assistance to those who otherwise would be unable to obtain adequate legal counsel and to insure that the recipient is accountable to its clients.

§1607.2 Definitions.

As used in this part,

(a) *Attorney member* means a board member who is an attorney admitted to practice in a State within the recipient's service area.

(b) *Board member* means a member of a recipient's governing body or policy body.

(c) *Eligible client member* means a board member who is financially eligible to receive legal assistance under the Act and part 1611 of this chapter at the time of appointment to each term of office to the recipient's governing body, without regard to whether the person actually has received or is receiving legal assistance at that time. Eligibility of client members shall be determined by the recipient or, if the recipient so chooses, by the appointing organization(s) or group(s) in accordance with written policies adopted by the recipient.

(d) *Governing body* means the board of directors or other body with authority to govern the activities of a recipient receiving funds under §1006(a)(1)(A) of the Act.

(e) *Policy body* means a policy board or other body established by a recipient to formulate and enforce policy with respect to the services provided under a grant or contract made under the Act.

(f) *Recipient* means any grantee or contractor receiving financial assistance from the Corporation under §1006(a)(1)(A) of the Act.

§1607.3 Composition.

(a) A recipient shall be incorporated in a State in which it provides legal assistance and shall have a governing

body which reasonably reflects the interests of the eligible clients in the area served and which consists of members, each of whom is supportive of the purposes of the Act and has an interest in, and knowledge of, the delivery of quality legal services to the poor.

(b) At least sixty percent (60%) of a governing body shall be attorney members.

(1) A majority of the members of the governing body shall be attorney members appointed by the governing body(ies) of one or more State, county or municipal bar associations, the membership of which represents a majority of attorneys practicing law in the localities in which the recipient provides legal assistance.

(i) Appointments may be made either by the bar association which represents a majority of attorneys in the recipient's service area or by bar associations which collectively represent a majority of the attorneys practicing law in the recipient's service area.

(ii) Recipients that provide legal assistance in more than one State may provide that appointments of attorney members be made by the appropriate bar association(s) in the State(s) or locality(ies) in which the recipient's principal office is located or in which the recipient provides legal assistance.

(2) Any additional attorney members may be selected by the recipient's governing body or may be appointed by other organizations designated by the recipient which have an interest in the delivery of legal services to the poor.

(3) Appointments shall be made so as to insure that the attorney members reasonably reflect the diversity of the legal community and the population of the areas served by the recipient, including race, ethnicity, gender and other similar factors.

(c) At least one-third of the members of a recipient's governing body shall be eligible clients when appointed. The members who are eligible clients shall be appointed by a variety of appropriate groups designated by the recipient that may include, but are not limited to, client and neighborhood associations and community-based organizations which advocate for or deliver services or resources to the client community served by the recipient. Recipients shall designate groups in a manner that reflects, to the extent possible, the variety of interests within the client community, and eligible client members should be selected so that they reasonably reflect the diversity of the eligible client population served by the recipient, including race, gender, ethnicity and other similar factors.

(d) The remaining members of a governing body may be appointed by the recipient's governing body or selected in a manner described in the recipient's bylaws or policies, and the appointment or selection shall be made so that the governing body as a whole reasonably reflects the diversity of the areas served by the recipient, including race, ethnicity, gender and other similar factors.

(e) The nonattorney members of a governing body shall not be dominated by persons serving as the representatives of a single association, group or organization, except that eligible client members may be selected from client organizations that are composed of coalitions of numerous smaller or regionally based client groups.

(f) Members of a governing body may be selected by appointment, election, or other means consistent with this part and with the recipient's bylaws and applicable State law.

(g) Recipients shall make reasonable and good faith efforts to insure that governing body vacancies are filled as promptly as possible.

(h) Recipients may recommend candidates for governing body membership to the appropriate bar associations and other appointing groups and should consult with the appointing organizations to insure that:

(1) Appointees meet the criteria for board membership set out in this part, including financial eligibility for persons appointed as eligible clients, bar admittance requirements for attorney board members, and the general requirements that all members be supportive of the purposes of the Act and have an interest in and knowledge of the delivery of legal services to the poor;

(2) The particular categories of board membership and the board as a whole

meet the diversity requirements described in §§1607.3(b)(3), 1607.3(c) and 1607.3(d);

(3) Appointees do not have actual and significant individual or institutional conflicts of interest with the recipient or the recipient's client community that could reasonably be expected to influence their ability to exercise independent judgment as members of the recipient's governing body.

§1607.4 Functions of a governing body.

(a) A governing body shall have at least four meetings a year. A recipient shall give timely and reasonable prior public notice of all meetings, and all meetings shall be public except for those concerned with matters properly discussed in executive session in accordance with written policies adopted by the recipient's governing body.

(b) In addition to other powers and responsibilities that may be provided for by State law, a governing body shall establish and enforce broad policies governing the operation of a recipient, but neither the governing body nor any member thereof shall interfere with any attorney's professional responsibilities to a client or obligations as a member of the profession or interfere with the conduct of any ongoing representation.

(c) A governing body shall adopt bylaws which are consistent with State law and the requirements of this part. Recipients shall submit a copy of such bylaws to the Corporation and shall give the Corporation notice of any changes in such bylaws within a reasonable time after the change is made.

§1607.5 Compensation.

(a) While serving on the governing body of a recipient, no attorney member shall receive compensation from that recipient, but any member may receive a reasonable per diem expense payment or reimbursement for actual expenses for normal travel and other reasonable out-of-pocket expenses in accordance with written policies adopted by the recipient.

(b) Pursuant to a waiver granted under §1607.6(b)(1), a recipient may adopt policies that would permit partners or associates of attorney members to participate in any compensated private attorney involvement activities supported by the recipient.

(c) A recipient may adopt policies that permit attorney members, subject to terms and conditions applicable to other attorneys in the service area:

(1) To accept referrals of fee-generating cases under part 1609 of these regulations;

(2) To participate in any uncompensated private attorney involvement activities supported by the recipient;

(3) To seek and accept attorneys' fees awarded by a court or administrative body or included in a settlement in cases undertaken pursuant to §§1607.5 (c) (1) and (2); and

(4) To receive reimbursement from the recipient for out-of-pocket expenses incurred by the attorney member as part of the activities undertaken pursuant to §1607.5(c)(2).

[59 FR 65254, Dec. 19, 1994, as amended at 60 FR 2330, Jan. 9, 1995]

§1607.6 Waiver.

(a) Upon application, the president shall waive the requirements of this part to permit a recipient that was funded under §222(a)(3) of the Economic Opportunity Act of 1964 and, on July 25, 1974, had a majority of persons who were not attorneys on its governing body, to continue such nonattorney majority.

(b) Upon application, the president may waive any of the requirements of this part which are not mandated by applicable law if a recipient demonstrates that it cannot comply with them because of: (1) The nature of the population, legal community or area served; or (2) Special circumstances, including but not limited to, conflicting requirements of the recipient's other major funding source(s) or State law.

(c) A recipient seeking a waiver under §1607.6(b)(1) shall demonstrate that it has made diligent efforts to comply with the requirements of this part.

(d) As a condition of granting a waiver under §1607.6(b)(2) of any of the requirements imposed upon governing bodies by §1607.3, the president shall require that a recipient have a policy body with a membership composed and

appointed in the manner prescribed by §1607.3. Such policy body shall be subject to the meeting requirements of §1607.4(a) and its attorney members shall be subject to the restrictions on compensation contained in §1607.5. The policy body shall have such specific powers and responsibilities as the President determines are necessary to enable it to formulate and enforce policy with respect to the services provided under the recipient's LSC grant or contract.

PART 1608—PROHIBITED POLITICAL ACTIVITIES

Sec.

AUTHORITY: Secs. 1001(5), 1005(b)(2), 1006(b)(3), 1006(b)(5)(B), 1006(d)(3), 1006 (d)(4), 1006(e)(1), 1006(e)(2), 1007(a)(6), 1007(b)(2); 42 U.S.C. 2996(5), 2996d(b)(2), 2996e(b)(3), 2996e(b)(5)(B), 2996e(d)(3), 2996e(d)(4), 2996e(e)(1), 2996e(e)(2), 2996f(a)(6), 2996(b)(2).

SOURCE: 43 FR 32773, July 28, 1978, unless otherwise noted.

§1608.1 Purpose.

This part is designed to insure that the Corporation's resources will be used to provide high quality legal assistance and not to support or promote political activities or interests. The part should be construed and applied so as to further this purpose without infringing upon the constitutional rights of employees or the professional responsibilities of attorneys to their clients.

§1608.2 Definition.

Legal assistance activities, as used in this part, means any activity.

(a) Carried out during an employee's working hours;

(b) Using resources provided by the Corporation or by a recipient; or

(c) That, in fact, provides legal advice, or representation to an eligible client.

§1608.3 Prohibitions applicable to the Corporation and to recipients.

(a) Neither the Corporation nor any recipient shall use any political test or qualification in making any decision, taking any action, or performing any function under the act.

(b) Neither the Corporation nor any recipient shall contribute or make available Corporation funds, or any personnel or equipment

(1) To any political party or association;

(2) To the campaign of any candidate for public or party office; or

(3) For use in advocating or opposing any ballot measure, initiative, or referendum.

§1608.4 Prohibitions applicable to all employees.

(a) No employee shall intentionally identify the Corporation or a recipient with any partisian or nonpartisan political activity, or with the campaign of any candidate for public or party office.

(b) No employee shall use any Corporation funds for activities prohibited to attorneys under §1608.6; nor shall an employee intentionally identify or encourage others to identify the Corporation or a recipient with such activities.

§1608.5 Prohibitions applicable to Corporation employees and to staff attorneys.

While employed under the act, no Corporation employee and no staff attorney shall, at any time,

(a) Use official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office, whether partisan of nonpartisan;

(b) Directly or indirectly coerce, attempt to coerce, command or advise an employee of the Corporation or of any recipient to pay, lend, or contribute anything of value to a political party, or committee, organization, agency or person for political purposes; or

(c) Be a candidate for partisan elective public office.

§1608.6 Prohibitions applicable to attorneys and to staff attorneys.

While engaged in legal assistance activities supported under the act, no attorney shall engage in

(a) Any political activity,

(b) Any activity to provide voters with transportation to the polls, or to provide similar assistance in connection with an election, or

(c) Any voter registration activity.

§1608.7 Attorney-client relationship.

Nothing in this part is intended to prohibit an attorney or staff attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

§1608.8 Enforcement.

This part shall be enforced according to the procedures set forth in §1612.5.

PART 1609—FEE-GENERATING CASES

Sec.

AUTHORITY: Sec. 1007(b)(1) Legal Services Act of 1974, as amended (42 U.S.C 2996f(b)(1)).

SOURCE: 49 FR 19656, May 9, 1984, unless otherwise noted.

§1609.1 Purpose.

This part is designed to insure that recipients do not compete with private attorneys and, at the same time, to guarantee that eligible clients are able to obtain appropriate and effective legal assistance.

§1609.2 Definition.

Fee-generating case means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds, or from the opposing party.

§1609.3 Prohibition.

No recipient shall use funds received from the Corporation to provide legal assistance in a fee-generating case unless other adequate representation is unavailable. All recipients shall establish procedures for the referral of fee-generating cases.

§1609.4 Authorized representation in a fee-generating case.

Other adequate representation is deemed to be unavailable when:

(a) The recipient has determined that free referral is not possible because:

(1) The case has been rejected by the local lawyer referral service, or by two private attorneys; or

(2) Neither the referral service nor any lawyer will consider the case without payment of a consultation fee; or

(3) Emergency circumstances compel immediate action before referral can be made, but the client is advised that if appropriate, and consistent with professional responsibility, referral will be attempted at a later time; or

(b) Recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other nonpecuniary relief, or inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims; or

(c) A court appoints a recipient or an employee of a recipient pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction; or

(d) An eligible client is seeking benefits under subchapter II of the Social Security Act, 42 U.S.C. 401, *et seq.*, as amended, Federal Old Age, Survivors, and Disability Insurance Benefits; or subchapter XVI of the Social Security Act, 42 U.S.C. 1381, *et seq.*, as amended, Supplemental Security Income for Aged, Blind, and Disabled.

§1609.5 Acceptance of fees.

A recipient may seek and accept a fee awarded or approved by a court or administrative body, or included in a settlement, if:

(a) The requirements of §1609.4 are met, and

(b) Funds received are not used for purposes prohibited by the Act, these regulations, or other law applicable to the expenditure of funds appropriated in the year the fee is received, and are accounted for in the manner directed by the Corporation.

§ 1609.6 Accounting for attorneys' fees.

Fees awarded to a recipient represent compensation to the recipient for resources expended in litigating a particular matter. The revenue from such fees shall be recorded in the same fund to which the related expenses have been charged. The revenue shall be recorded during the accounting period in which the money from the fee award is received by the recipient.

§ 1609.7 Acceptance of reimbursement.

When a case or matter subject to this part results in a recovery of damages, other than statutory benefits, a recipient may accept reimbursement from the client for out-of-pocket costs and expenses incurred in connection with the case or matter, if

(a) The requirements of §1609.4 are met, and

(b) The client has agreed in writing to reimburse the recipient for such costs and expenses.

§ 1609.8 Applicability.

Nothing in this part shall prevent a recipient from:

(a) Requiring a client to pay court fees when the client does not qualify to proceed in forma pauperis under the rules of the jurisdiction; or

(b) Accepting a fee in a case that was initiated prior to adoption of this part;

(c) Acting as co-counsel with a private attorney when the case meets the standards set forth in §1609.5, and accepting part of any fees that may result from a shared case.

PART 1610—USE OF NON-LSC FUNDS

Sec.

AUTHORITY: 42 U.S.C. 2996i; 110 Stat. 1321 (1996).

SOURCE: 61 FR 41962, Aug. 13, 1996, unless otherwise noted.

§ 1610.1 Purpose.

This part is designed to implement statutory restrictions on the use of non-LSC funds by LSC recipients.

§ 1610.2 Definitions.

(a) *Purpose prohibited by the LSC Act* means any activity prohibited by the following sections of the LSC Act and those provisions of the Corporation's regulations that implement such sections of the Act:

(1) Sections 1006(d)(3), 1006(d)(4), 1007(a)(6), and 1007(b)(4) of the LSC Act and 45 CFR Part 1608 of the LSC Regulations (Political activities);

(2) Section 1007(a)(10) of the LSC Act (Activities inconsistent with professional responsibilities);

(3) Section 1007(b)(2) of the LSC Act and 45 CFR Part 1613 of the LSC Regulations (Criminal proceedings);

(4) Section 1007(b)(3) of the LSC Act and 45 CFR Part 1615 of the LSC Regulations (Actions challenging criminal convictions);

(5) Section 1007(b)(7) of the LSC Act and 45 CFR Part 1612 of the LSC Regulations (Organizing activities);

(6) Section 1007(b)(8) of the LSC Act (Abortions);

(7) Section 1007(b)(9) of the LSC Act (School desegregation); and

(8) Section 1007(b)(10) of the LSC Act (Violations of Military Selective Service Act or military desertion).

(b) *Activity prohibited by or inconsistent with Section 504* means any activity prohibited by, or inconsistent with the requirements of, the following sections of 110 Stat. 1321 (1996) and those provisions of the Corporation's regulations that implement those sections:

(1) Section 504(a)(1) and 45 CFR Part 1632 of the LSC Regulations (Redistricting);

(2) Sections 504(a)(2) through (6), as modified by Sections 504(b) and (e), and 45 CFR Part 1612 of the LSC Regulations (Legislative and administrative advocacy);

(3) Section 504(a)(7) and 45 CFR Part 1617 of the LSC Regulations (Class actions);

(4) Section 504(a)(8) and Part 1636 of this Chapter (Statement of facts and client identification);

(5) Section 504(a)(9) and 45 CFR Part 1620 of the LSC Regulations (Priorities);

(6) Section 504(a)(10) and 45 CFR Part 1635 of the LSC Regulations (Timekeeping);

(7) Section 504(a)(11) and 45 CFR Part 1626 of the LSC Regulations (Aliens);

(8) Section 504(a)(12) and 45 CFR Part 1612 of the LSC Regulations (Public policy training);

(9) Section 504(a)(13) and Part 1642 of this Chapter (Attorneys' fees);

(10) Section 504(a)(14) (Abortion litigation);

(11) Section 504(a)(15) and Part 1637 of this Chapter (Prisoner litigation);

(12) Section 504 (a)(16), as modified by Section 504(e), and Part 1639 of this Chapter (Welfare reform);

(13) Section 504(a)(17) and 45 CFR Part 1633 of the LSC Regulations (Drug-related evictions); and

(14) Section 504(a)(18) and Part 1638 of this Chapter (In-person solicitation).

(c) *IOLTA funds* means funds derived from programs established by State court rules or legislation that collect and distribute interest on lawyers' trust accounts.

(d) *Non-LSC funds* means funds derived from a source other than the Corporation.

(e) *Private funds* means funds derived from an individual or entity other than a governmental source or LSC.

(f) *Public funds* means non-LSC funds derived from a Federal, State, or local government or instrumentality of a government. For purposes of this part, IOLTA funds shall be treated in the same manner as public funds.

(g) *Tribal funds* means funds received from an Indian tribe or from a private nonprofit foundation or organization for the benefit of indians or Indian tribes.

(h) *Private attorney* means any attorney who is engaged in the private practice of law on a for-profit basis. A ''law firm'' is a group of two or more private attorneys who are engaged in the private practice of law as a partnership, professional corporation, or similar arrangement.

(i) *State or local entity of attorneys* means a State or local voluntary or mandatory bar association, pro bono or judicare program, or other similar entity of attorneys.

[61 FR 41962, Aug. 13, 1996, as amended at 61 FR 45741, Aug. 29, 1996]

§1610.3 Prohibition.

A recipient may not use non-LSC funds for any purpose prohibited by the LSC Act or for any activity prohibited by or inconsistent with section 504 , unless such use is authorized by §§1610.4 or 1610.6 of this part.

§1610.4 Authorized use of other funds.

(a) A recipient may receive tribal funds and expend them in accordance with the specific purposes for which the tribal funds were provided.

(b) A recipient may receive public or IOLTA funds and use them in accordance with the specific purposes for which they were provided, if the funds are not used for any activity prohibited by or inconsistent with section 504.

(c) A recipient may receive private funds and use them in accordance with the purposes for which they were provided, provided that the funds are not used for any activity prohibited by the LSC Act or prohibited or inconsistent with section 504.

(d) A recipient may use non-LSC funds to provide legal assistance to an individual who is not financially eligible for services under part 1611 of this chapter, provided that the funds are used for the specific purposes for which those funds were provided and are not used for any activity prohibited by the LSC Act or prohibited by or inconsistent with section 504.

§1610.5 Notification.

(a) Except as provided in paragraph (b) of this section, no recipient may accept funds from any source other than the Corporation, unless the recipient provides written notification to the source of the funds that the funds may not be expended for any purpose or activity prohibited under this part.

(b) A recipient is not required to provide such notification for contributions of less than $250.

§ 1610.6 Applicability.

(a) The prohibitions referred to in §§ 1610.2(a)(3) (Criminal proceedings), (a)(4) (Actions challenging criminal convictions) or (b)(11) (Prisoner litigation) of this part will not apply to the non-LSC funds of the attorney, law firm, entity of attorneys, or the public defender program or project and will not apply to funds received to support criminal or related cases accepted pursuant to a court appointment, if the Corporation or a recipient makes a contract or other arrangement for the provision of civil legal assistance with:

(1) A private attorney, law firm or state or local entity of attorneys that represents clients in criminal cases or matters,

(2) A legal aid organization that provides criminal and related legal assistance through a separately funded public defender program or project; or

(3) A legal aid organization that accepts criminal or related cases pursuant to a court appointment.

(b) If a recipient uses non-LSC funds to enter into a contract or other arrangement with another person or entity for the provision of civil legal assistance, the restrictions referred to in this part will apply to the funds transferred, but will not apply to the other non-LSC funds of the person or entity.

(c) Except as provided in paragraph (a) of this section, this part does not apply to a transfer of LSC funds. Transfer of LSC funds is governed by 45 CFR part 1627.

§ 1610.7 Accounting.

Funds received by a recipient from a source other than the Corporation shall be accounted for as separate and distinct receipts and disbursements in a manner directed by the Corporation.

PART 1611—ELIGIBILITY

Sec.

AUTHORITY: Secs. 1006(b)(1), 1007(a)(1), Legal Services Corporation Act of 1974; 42 U.S.C. 2996e(b)(1), 2996f(a)(1), 2996f(a)(2)).

SOURCE: 48 FR 54205, Nov. 30, 1983, unless otherwise noted.

§ 1611.1 Purpose.

This part is designed to ensure that a recipient will determine eligibility according to criteria that give preference to the legal needs of those least able to obtain legal assistance, and afford sufficient latitude for a recipient to consider local circumstances and its own resource limitations. The part also seeks to ensure that eligibility is determined in a manner conducive to development of an effective attorney-client relationship.

§ 1611.2 Definitions.

Governmental program for the poor means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of financial need.

Income means actual current annual total cash receipts before taxes of all persons who are resident members of, and contribute to, the support of a family unit.

Total cash receipts include money wages and salaries before any deduction, but do not include food or rent in lieu of wages; income from self-employment after deductions for business or farm expenses; regular payments from public assistance; social security; unemployment and worker's compensation; strike benefits from union funds; veterans benefits; training stipends; alimony, child support and military family allotments or other regular support from an absent family member or someone not living in the household; public or private employee pensions, and regular insurance or annuity payments; and income from dividends, interest, rents, royalties or from estates and trusts. They do not include money withdrawn from a bank, tax refunds, gifts, compensation and/or one-time insurance payments for injuries sustained, and non-cash benefits.

§1611.3 Maximum income level.

(a) Every recipient shall establish a maximum annual income level for persons to be eligible to receive legal assistance under the Act.

(b) Unless specifically authorized by the Corporation, a recipient shall not establish a maximum annual income level that exceeds one hundred and twenty-five percent (125 percent) of the current official Federal Poverty Income Guidelines. The maximum annual income levels are set forth in Appendix A.

(c) Before establishing its maximum income level, a recipient shall consider relevant factors including:

(1) Cost-of-living in the locality;

(2) The number of clients who can be served by the resources of the recipient;

(3) The population who would be eligible at and below alternative income levels; and

(4) The availability and cost of legal services provided by the private bar in the area.

(d) Unless authorized by §1611.4, no person whose income exceeds the maximum annual income level established by a recipient shall be eligible for legal assistance under the Act.

(e) This part does not prohibit a recipient from providing legal assistance to a client whose annual income exceeds the maximum income level established here, if the assistance provided the client is supported by funds from a source other than the Corporation.

§1611.4 Authorized exceptions.

(a) A person whose gross income exceeds the maximum income level established by a recipient but does not exceed 150 percent of the national eligibility level (125% of poverty) may be provided legal assistance under the Act if:

(1) The person's circumstances require that eligibility should be allowed on the basis of one or more of the factors set forth in §1611.5(b)(1); or

(2) The person is seeking legal assistance to secure benefits provided by a governmental program for the poor.

(b) In the event that a recipient determines to serve a person whose gross income exceeds 125% of poverty, that decision shall be documented and included in the client's file. The recipient shall keep such other records as will provide information to the Corporation as to the number of clients so served and the factual bases for the decisions made.

§1611.5 Determination of eligibility.

(a) The governing body of a recipient shall adopt guidelines, consistent with these regulations, for determining the eligibility of persons seeking legal assistance under the Act. By January 30, 1984, and annually thereafter, guidelines shall be reviewed and appropriate adjustments made.

(b) In addition to gross income, a recipient shall consider the other relevant factors listed in paragraphs (b)(1) and (b)(2) of this section before determining whether a person is eligible to receive legal assistance.

(1) Factors which shall be used in the determination of the eligibility of clients over the maximum income level shall include:

(A) Current income prospects, taking into account seasonal variations in income;

(B) Medical expenses, and in exceptional instances, with the prior, written approval of the project director based on written documentation received by the recipient and available for review by the Corporation, if a person's gross income is primarily committed to medical or nursing home expenses, a person may be served even if that person's gross income exceeds 150 percent of the national eligibility level;

(C) Fixed debts and obligations, including unpaid Federal, state and local taxes from prior years;

(D) Child care, transportation, and other expenses necessary for employment;

(E) Expenses associated with age or physical infirmity of resident family members; and

(F) Other significant factors related to financial inability to afford legal assistance.

(2) Factors which shall be used in the determination of the eligibility of clients under the maximum income level shall include:

(A) Current income prospects, taking into account seasonal variations in income;

(B) The availability of private legal representation at a low cost with respect to the particular matter in which assistance is sought;

(C) The consequences for the individual if legal assistance is denied;

(D) The existence of assets, including both liquid and nonliquid, which are available to the applicant and are in excess of the asset ceiling set by the recipient pursuant to § 1611.6;

(E) Other significant factors related to financial inability to afford legal assistance, which may include evidence of a prior administrative or judicial determination that the person's present lack of income results from refusal or unwillingness, without good cause, to seek or accept suitable employment.

(3)(A) If a recipient tentatively determines to serve a client over the maximum income level on the basis of factors listed in § 1611.5(b)(1), the factors listed in § 1611.5(b)(2) shall also be used before reaching a final determination.

(B) If a recipient tentatively determines not to serve a client under the maximum income level on the basis of factors listed in §1611.5(b)(2), the factors listed in § 1611.5(b)(1) must also be used before reaching a final determination.

(c) A recipient may provide legal assistance to a group, corporation, or association if it is primarily composed of persons eligible for legal assistance under the Act and if it provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel.

§ 1611.6 Asset ceilings.

(a) By January 30, 1984, and annually thereafter, the governing body of the recipient shall establish and transmit to the Corporation guidelines incorporating specific and reasonable asset ceilings, including both liquid and nonliquid assets, to be utilized in determining eligibility for services. The guidelines shall consider the economy of the service area and the relative cost-of-living of low-income persons so as to ensure the availability of services to those in the greatest economic and legal need.

(b) The guidelines shall be consistent with the recipient's priorities established in accordance with 45 CFR 1620 and special consideration shall be given to the legal needs of the elderly, institutionalized, and handicapped.

(c) Assets considered shall include all liquid and non-liquid assets of all persons who are resident members of a family unit, except that a recipient may exclude the principal residence of a client. The guidelines shall take into account impediments to an individual's access to assets of the family unit or household.

(d) Reasonable equity value in work-related equipment which is essential to the employment or self-employment of an applicant or member of a family unit, shall not be utilized to disqualify an applicant, provided that the owner is attempting to produce income consistent with its fair market value.

(e) The governing body may establish authority for the project director to waive the ceilings on minimum allowable assets in unusual or extremely meritorious situations. In the event that a waiver is granted, that decision shall be documented and included in the client's file. The recipient shall keep such other records as will provide information to the Corporation as to the number of clients so served and the factual basis for the decisions made.

§ 1611.7 Manner of determining eligibility.

(a) A recipient shall adopt a simple form and procedure to obtain information to determine eligibility in a manner that promotes the development of trust between attorney and client. The form and procedure adopted shall be subject to approval by the Corporation, and the information obtained shall be preserved, in a manner that protects the identity of the client, for audit by the Corporation.

(b) If there is substantial reason to doubt the accuracy of the information, a recipient shall make appropriate inquiry to verify it, in a manner consistent with an attorney-client relationship.

(c) Information furnished to a recipient by a client to establish financial eligibility shall not be disclosed to any

person who is not employed by the recipient in a manner that permits identification of the client, without express written consent of the client, except that the recipient shall provide such information to the Corporation when:

(1) The Corporation is investigating allegations that question the financial eligibility of a previously identified client and the recipient's representation thereof;

(2) The information sought by the Corporation relates solely to the financial eligibility of that particular client;

(3) The information sought by the Corporation is necessary to confirm or deny specific allegations relating to that particular client's financial eligibility and the recipient's representation thereof; and

(4) The specific information sought by the Corporation is not protected by the attorney-client privilege.

The information provided to the Corporation by the recipient shall not be disclosed to any person who is not employed by the Corporation. Prior to providing the information to the Corporation, the recipient shall notify the client that the recipient is required to provide to the Corporation the information sought.

§1611.8 Retainer agreement.

(a) A recipient shall execute a written retainer agreement, in a form approved by the Corporation, with each client who receives legal services from the recipient. The retainer agreement shall be executed when representation commences (or, if not possible owing to an emergency situation, as soon thereafter as is practicable), and shall clearly identify the relationship between the client and the recipient, the matter in which representation is sought, the nature of the legal services to be provided, and the rights and responsibilities of the client. The recipient shall retain the executed retainer agreement as part of the client's file, and shall make the agreement available for review by the Corporation in a manner which protects the identity of the client.

(b) A recipient is not required to execute a written retainer agreement when the only service to be provided is brief advice and consultation.

§1611.9 Change in circumstances.

If an eligible client becomes ineligible through a change in circumstances, a recipient shall discontinue representation if the change in circumstances is sufficiently likely to continue for the client to afford private legal assistance, and discontinuation is not inconsistent with the attorney's professional responsibilities.

APPENDIX A OF PART 1611—LEGAL SERVICES CORPORATION 1996 POVERTY GUIDELINES*

Size of family unit	All States but Alaska and Hawaii [1]	Alaska [2]	Hawaii [3]
1	$9,675	$12,075	$11,138
2	12,950	16,175	14,900
3	16,225	20,275	18,663
4	19,500	24,375	22,425
5	22,775	28,475	26,188
6	26,050	32,575	29,950
7	29,325	36,675	33,713
8	32,600	40,775	37,475

[1] For family units with more than eight members, add $3,275 for each additional member in a family.
[2] For family units with more than eight members, add $4,100 for each additional member in a family.
[3] For family units with more than eight members, add $3,763 for each additional member in a family.

[61 FR 12041, Mar. 25, 1996]

*The figures in this table represent 125% of the poverty guidelines by family size as determined by the Department of Health and Human Services.

PART 1612—RESTRICTIONS ON LOBBYING AND CERTAIN OTHER ACTIVITIES

Sec.

AUTHORITY: Sections 504(a) (2), (3), (4), (5), (6), and (12), 504 (b) and (e), Pub. L. 104–134, 110 Stat. 1321; 42 U.S.C. 2996e(b)(5); 2996f(a) (5) and (6); 2996f(b) (4), (6) and (7), and 2996g(e).

SOURCE: 61 FR 45745, Aug. 29, 1996, unless otherwise noted.

§ 1612.1 Purpose.

The purpose of this rule is to ensure that LSC recipients and their employees do not engage in certain prohibited activities, including representation before legislative bodies or other direct lobbying activity, grassroots lobbying, participation in rulemaking, public demonstrations, advocacy training, and certain organizing activities. The rule also provides guidance on when recipients may participate in State or local fund raising or in public rulemaking, and when they may respond to requests of legislative and administrative officials using non-LSC funds.

§ 1612.2 Definitions.

(a)(1) Grassroots lobbying means any oral, written or electronically transmitted communication or any advertisement, telegram, letter, article, newsletter, or other printed or written matter or device which contains a direct suggestion to the public to contact public officials in support of or in opposition to pending or proposed legislation, regulations, executive decisions, or any decision by the electorate on a measure submitted to it for a vote. It also includes the provision of financial contributions by recipients to or participation by recipients in any demonstration, march, rally, fund raising drive, lobbying campaign, letter writing or telephone campaign for the purpose of influencing the course of such legislation, regulations, decisions by administrative bodies, or any decision by the electorate on a measure submitted to it for a vote.

(2) Grassroots lobbying does not include communications which are limited solely to reporting the content or status of pending or proposed legislation or regulations or the effect which such legislation or regulations may have on eligible clients or on their legal representation.

(b) Legislation means any action or proposal for action by Congress or by a State or local legislative body which is intended to prescribe law or public policy. The term includes, but is not limited to, action on bills, constitutional amendments, the ratification of treaties and intergovernmental agreements, approval of appointments and budgets, and approval or disapproval of actions of the executive. It does not include those actions of a legislative body which adjudicate the rights of individuals under existing laws; nor does it include legislation adopted by an Indian Tribal Council.

(c) Public policy means an overall plan embracing the general goals and procedures of any governmental body and pending or proposed statutes, rules, and regulations.

(d)(1) Rulemaking means any agency process for formulating, amending, or repealing rules, regulations or guidelines of general applicability and future effect issued by the agency pursuant to Federal, State or local rulemaking procedures, including:

(i) The customary procedures that are used by an agency to formulate and

adopt proposals for the issuance, amendment or revocation of regulations or other statements of general applicability and future effect, such as ''notice and comment'' rulemaking procedures under the Federal Administrative Procedure Act or similar procedures used by State or local government agencies and negotiated rulemaking; and

(ii) adjudicatory proceedings that are formal adversarial proceedings to formulate or modify an agency policy of general applicability and future effect.

(2) Rulemaking does not include:

(i) administrative proceedings that produce determinations that are of particular, rather than general, applicability and affect only the private rights, benefits or interests of individuals, such as social security hearings, welfare fair hearings or granting or withholding of licenses;

(ii) communication with agency personnel for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, guidelines, policies or practices.

(e) Public rulemaking means any rulemaking proceeding or portion of such proceeding or procedure that is open to the public through notices of proposed rulemaking published in the FEDERAL REGISTER or similar State or local journals, announcements of public hearings on proposed rules or notices of proposed rulemaking including those that are routinely sent to interested members of the public, or other similar notifications to members of the public;

(f) The term similar procedure refers to a legislative process by which matters must be determined by a vote of the electorate.

§1612.3 Prohibited legislative and administrative activities.

(a) Except as provided in §§1612.5 and 1612.6, recipients shall not attempt to influence—

(1) The passage or defeat of any legislation or constitutional amendment;

(2) Any initiative, or any referendum or any similar procedure of the Congress, any State legislature, any local council, or any similar governing body acting in any legislative capacity;

(3) Any provision in a legislative measure appropriating funds to, or defining or limiting the functions or authority of, the recipient or the Corporation; or,

(4) The conduct of oversight proceedings concerning the recipient or the Corporation.

(b) Except as provided in §§1612.5 and 1612.6, recipients shall not participate in or attempt to influence any rulemaking, or attempt to influence the issuance, amendment or revocation of any executive order.

(c) Recipients shall not use any funds to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, administrative expense, or related expense, associated with an activity prohibited in paragraphs (a) and (b) in this section.

§1612.4 Grassroots lobbying.

A recipient shall not engage in any grassroots lobbying activity.

§1612.5 Permissible activities using any funds.

(a) A recipient may provide administrative representation for an eligible client in a proceeding that adjudicates the particular rights or interests of such eligible client or in negotiations directly involving that client's legal rights or responsibilities including prelitigation negotiation and negotiation in the course of litigation.

(b) A recipient may initiate or participate in litigation challenging agency rules, regulations, guidelines or policies, unless such litigation is otherwise prohibited by law or Corporation regulations.

(c) Nothing in this Part is intended to prohibit a recipient from—

(1) Communicating with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies;

(2) Informing clients, other recipients, or attorneys representing eligible clients, about new or proposed statutes, executive orders, or administrative regulations;

(3) Communicating directly or indirectly with the Corporation for any purpose including commenting upon

existing or proposed Corporation rules, regulations, guidelines, instructions and policies;

(4) Participating in meetings or serving on committees of bar associations, provided that no recipient resources are used to support prohibited legislative or rulemaking activities and the recipient is not identified with activities of bar associations that include such prohibited activities;

(5) Advising a client of the client's right to communicate directly with an elected official; or

(6) Participating in activity related to the judiciary, including the promulgation of court rules, rules of professional responsibility and disciplinary rules.

§ 1612.6 Permissible activities using non-LSC funds.

(a) If the conditions of paragraphs (b) and (c) of this section are met, recipients and their employees may use non-LSC funds to respond to a written request from a governmental agency or official thereof, elected official, legislative body, committee, or member thereof made to the employee, or to a recipient to—

(1) Testify orally or in writing;

(2) Provide information which may include analysis of or comments upon existing or proposed rules, regulations or legislation, or drafts of proposed rules, regulations or legislation;

(3) Testify before or make information available to commissions, committees or advisory bodies; or

(4) Participate in negotiated rulemaking under the Negotiated Rulemaking Act of 1990, 5 U.S.C. 561 *et seq.*, or comparable State or local laws.

(b) Communications made in response to requests under paragraph (a) may be distributed only to the party or parties that make the request or to other persons or entities only to the extent that such distribution is required to comply with the request.

(c) No employee of the recipient shall solicit or arrange a request from any official to testify or otherwise provide information in connection with legislation or rulemaking.

(d) Recipients shall maintain copies of all written requests received by the recipient and written responses made in response thereto and make such requests and written responses available to monitors and other representatives of the Corporation upon request.

(e) Recipients may provide oral or written comment to an agency and its staff in a public rulemaking proceeding using non-LSC funds.

(f) Recipients may use non-LSC funds to contact or communicate with, or respond to a request from, a State or local government agency, a State or local legislative body or committee, or a member thereof, regarding funding for the recipient, including a pending or proposed legislative or agency proposal to fund such recipient.

§ 1612.7 Public demonstrations and activities.

(a) During working hours, while providing legal assistance or representation to the recipient's clients or while using resources provided by the Corporation or by private entities, no employee of a recipient shall—

(1) Participate in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation; or

(2) Encourage, direct, or coerce others to engage in such activities.

(b) No employee of a recipient shall at any time engage in or encourage others to engage in any:

(1) Rioting or civil disturbance;

(2) Activity determined by a court to be in violation of an outstanding injunction of any court of competent jurisdiction; or

(3) Other illegal activity that is inconsistent with an employee's responsibilities under applicable law, Corporation regulations, or the rules of professional responsibility of the jurisdiction where the recipient is located or the employee practices law.

(c) Nothing in this section shall prohibit an attorney from—

(1) Informing and advising a client about legal alternatives to litigation or the lawful conduct thereof; or

(2) Taking such action on behalf of a client as may be required by professional responsibilities or applicable law of any State or other jurisdiction.

§ 1612.8 Training.

(a) A recipient may not support or conduct training programs that—

(1) Advocate particular public policies; or

(2) Encourage or facilitate political activities, labor or anti-labor activities, boycotts, picketing, strikes or demonstrations, or the development of strategies to influence legislation or rulemaking; or

(3) Disseminate information about such policies or activities.

(b) Nothing in this section shall be construed to prohibit training of any attorneys or paralegals, clients, lay advocates, or others involved in the representation of eligible clients necessary for preparing them—

(1) To provide adequate legal assistance to eligible clients; or

(2) To provide advice to any eligible client as to the legal rights of the client.

(c) No funds of a recipient shall be used to train participants to engage in activities prohibited by the Act, other applicable Federal law, or Corporation regulations, guidelines or instructions.

§ 1612.9 Organizing.

(a) No funds made available by the Corporation or by private entities may be used to initiate the formation, or to act as an organizer, of any association, federation, labor union, coalition, network, alliance, or any similar entity.

(b) This section shall not be construed to apply to:

(1) Informational meetings attended by persons engaged in the delivery of legal services at which information about new developments in law and pending cases or matters are discussed; or

(2) Organizations composed exclusively of eligible clients formed for the purpose of advising a legal services program about the delivery of legal services.

(c) Recipients and their employees may provide legal advice or assistance to eligible clients who desire to plan, establish or operate organizations, such as by preparing articles of incorporation and bylaws.

§ 1612.10 Recordkeeping and accounting for activities funded with non-LSC funds.

(a) No funds made available by the Corporation shall be used to pay for administrative overhead or related costs associated with any activity listed in § 1612.6.

(b) Recipients shall maintain separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities permitted by § 1612.6.

(c) Recipients shall submit semi-annual reports describing their legislative activities with non-LSC funds conducted pursuant to § 1612.6 of these regulations, together with such supporting documentation as specified by the Corporation.

§ 1612.11 Recipient policies and procedures.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part.

PART 1613—RESTRICTIONS ON LEGAL ASSISTANCE WITH RESPECT TO CRIMINAL PROCEEDINGS

Sec.

AUTHORITY: Sec. 1007(b)(1); 42 U.S.C. 2996f(b)(1).

SOURCE: 43 FR 32775, July 28, 1978, unless otherwise noted.

§ 1613.1 Purpose.

This part is designed to insure that Corporation funds will not be used to provide legal assistance with respect to criminal proceedings unless such assistance is required as part of an attorney's responsibilities as a member of the bar.

§ 1613.2 Definition.

Criminal proceeding means the adversary judicial process prosecuted by a public officer and initiated by a formal complaint, information, or indictment charging a person with an offense denominated ''criminal'' by applicable

law and punishable by death, imprisonment, or a jail sentence. A misdemeanor or lesser offense tried in an Indian tribal court is not a ''criminal proceeding''.

§ 1613.3 Prohibition.

Corporation funds shall not be used to provide legal assistance with respect to a criminal proceeding, unless authorized by this part.

§ 1613.4 Authorized representation.

Legal assistance may be provided with respect to a criminal proceeding.

(a) Pursuant to a court appointment made under a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction, if authorized by the recipient after a determination that it is consistent with the recipient's primary responsibility to provide legal assistance to eligible clients in civil matters; or

(b) When professional responsibility requires representation in a criminal proceeding arising out of a transaction with respect to which the client is being, or has been, represented by a recipient.

PART 1614—PRIVATE ATTORNEY INVOLVEMENT

Sec.
1614.1 Purpose.
1614.2 General policy.
1614.3 Range of activities.
1614.4 Procedure.
1614.5 Prohibition of revolving litigation funds.
1614.6 Waivers.
1614.7 Failure to comply.

AUTHORITY: Sec. 1007(a)(2)(C) and sec. 1007(a)(3); (42 U.S.C. 2996f(a)(2)(C) and 42 U.S.C. 2996f(a)(3)).

SOURCE: 50 FR 48591, Nov. 26, 1985, unless otherwise noted.

§ 1614.1 Purpose.

(a) This part is designed to ensure that recipients of Legal Services Corporation funds involve private attorneys in the delivery of legal assistance to eligible clients. Except as provided hereafter, a recipient of Legal Services Corporation funding shall devote an amount equal to at least twelve and one-half percent (12½%) of the recipient's LSC annualized basic field award to the involvement of private attorneys in such delivery of legal services; this requirement is hereinafter sometimes referred to as the ''PAI requirement''. Funds received from the Corporation as one-time special grants shall not be considered in determining a recipient's PAI requirement.

(b) Recipients of Native American or migrant funding shall provide opportunity for involvement in the delivery of services by the private bar in a manner which is generally open to broad participation in those activities undertaken with those funds, or shall demonstrate to the satisfaction of the Corporation that such involvement is not feasible.

(c) Because the Corporation's PAI requirement is based upon an effort to generate the most possible legal services for eligible clients from available, but limited, resources, recipients should attempt to assure that the market value of PAI activities substantially exceeds the direct and indirect costs being allocated to meet the requirements of this Part.

(d) As of January 1, 1986, the term ''private attorney'' as used in this Part means an attorney who is not a staff attorney as defined in §1600.1 of these regulations.

(e) After the effective date of this regulation, no PAI funds shall be committed for direct payment to any attorney who for any portion of the previous two years has been a staff attorney as defined in §1600.1 of these regulations; provided, however, that, for the remainder of the 1986 fiscal year, recipients may honor contractual arrangements made to such private attorneys if these arrangements were made before the effective date of this regulation; provided, further, however, that this paragraph shall not be construed to restrict the use of PAI funds in a *pro bono* or judicare project on the same terms that are available to other attorneys; and provided further, however, that this paragraph shall not be construed to restrict the payment of PAI funds as a result of work performed by an attorney who practices in

the same firm with such former staff attorney.

[50 FR 48591, Nov. 26, 1985, as amended at 51 FR 21559, June 13, 1986]

§1614.2 General policy.

(a) This part implements the policy adopted by the Board of Directors of the Corporation which requires that a substantial amount of funds be made available to encourage the involvement of private attorneys in the delivery of legal assistance to eligible clients through both *pro bono* and compensated mechanisms, and that such funds be expended in an economic and efficient manner.

(b) In the case of recipients whose service areas are adjacent, coterminous or overlapping, the recipients may enter into joint efforts to involve the private attorneys in the delivery of legal services to eligible clients, subject to the prior approval of the Office of Field Services. In order to be approved the joint venture plan must meet the following conditions:

(1) The recipients involved in the joint venture must plan to expend at least twelve and one-half percent (12½%) of the aggregate of their basic field awards on PAI. In the case of recipients with adjacent service areas, 12½% of each recipient's grant shall be expended to PAI; provided, however, that such expenditure is subject to waiver under §1614.6;

(2) Each recipient in the joint venture must be a bona fide participant in the activities undertaken by the joint venture; and

(3) The joint PAI venture must provide an opportunity for involving private attorneys throughout the entire joint service area(s).

(c) Private attorney involvement shall be an integral part of a total local program undertaken within the established priorities of that program in a manner that furthers the statutory requirement of high quality, economical and effective client-centered legal assistance to eligible clients. Decisions concerning implementation of the substantial involvement requirement rest with the recipient through its governing body, subject to review and evaluation by the Corporation.

§1614.3 Range of activities.

(a) Activities undertaken by the recipient to meet the requirements of this part must include the direct delivery of legal assistance to eligible clients through programs such as organized *pro bono* plans, reduced fee plans, judicare panels, private attorney contracts, or those modified *pro bono* plans which provide for the payment of nominal fees by eligible clients and/or organized referral systems; except that payment of attorney's fees through ''revolving litigation fund'' systems, as described in §1614.5 of this part, shall neither be used nor funded under this part nor funded with any LSC support;

(b) Activities undertaken by recipients to meet the requirements of this part may also include, but are not limited to:

(1) Support provided by private attorneys to the recipient in its delivery of legal assistance to eligible clients on either a reduced fee or *pro bono* basis through the provision of community legal education, training, technical assistance, research, advice and counsel; co-counseling arrangements; or the use of private law firm facilities, libraries, computer-assisted legal research systems or other resources; and

(2) Support provided by the recipient in furtherance of activities undertaken pursuant to this Section including the provision of training, technical assistance, research, advice and counsel, or the use of recipient facilities, libraries, computer assisted legal research systems or other resources.

(c) The specific methods to be undertaken by a recipient to involve private attorneys in the provision of legal assistance to eligible clients will be determined by the recipient's taking into account the following factors:

(1) The priorities established pursuant to part 1620 of these regulations;

(2) The effective and economic delivery of legal assistance to eligible clients;

(3) The linguistic and cultural barriers to effective advocacy.

(4) The actual or potential conflicts of interest between specific participating attorneys and individual eligible clients; and

(5) The substantive and practical expertise, skills, and willingness to undertake new or unique areas of the law of participating attorneys.

(d) Systems designed to provide direct services to eligible clients by private attorneys on either a *pro bono* or reduced fee basis, shall include at a minimum, the following components:

(1) Intake and case acceptance procedures consistent with the recipient's established priorities in meeting the legal needs of eligible clients;

(2) Case assignments which ensure the referral of cases according to the nature of the legal problems involved and the skills, expertise, and substantive experience of the participating attorney;

(3) Case oversight and follow-up procedures to ensure the timely disposition of cases to achieve, if possible, the result desired by the client and the efficient and economical utilization of recipient resources; and

(4) Access by private attorneys to LSC recipient resources, including those of LSC national and state support centers, that provide back-up on substantive and procedural issues of the law.

(e) The recipient shall demonstrate compliance with this part by utilizing financial systems and procedures and maintaining supporting documentation to identify and account separately for costs related to the PAI effort. Such systems and records shall meet the requirements of the Corporation's Audit and Accounting Guide for Recipients and Auditors and shall have the following characteristics:

(1) They shall accurately identify and account for:

(i) The recipient's administrative, overhead, staff, and support costs related to PAI activities. Non-personnel costs shall be allocated on the basis of reasonable operating data. All methods of allocating common costs shall be clearly documented. If any direct or indirect time of staff attorneys or paralegals is to be allocated as a cost to PAI, such costs must be documented by time sheets accounting for the time those employees have spent on PAI activities. The timekeeping requirement does not apply to such employees as receptionists, secretaries, intake personnel or bookkeepers; however, personnel cost allocations for non-attorney or non-paralegal staff should be based on other reasonable operating data which is clearly documented;

(ii) Payments to private attorneys for support or direct client services rendered. The recipient shall maintain contracts on file which set forth payment systems, hourly rates, and maximum allowable fees. Bills and/or invoices from private attorneys shall be submitted before payments are made. Encumbrances shall not be included in calculating whether a recipient has met the requirement of this part;

(iii) Contractual payments to individuals or organizations that undertake administrative, support, and/or direct services to eligible clients on behalf of the recipient consistent with the provisions of this part. Contracts concerning transfer of LSC funds for PAI activities shall require that such funds be accounted for by the recipient in accordance with LSC guidelines, including the requirements of the Audit and Accounting Guide for Recipients and Auditors and 45 CFR part 1627;

(iv) Other such actual costs as may be incurred by the recipient in this regard.

(2) Support and expenses relating to the PAI effort must be reported separately in the recipient's year-end audit. This shall be done by establishing a separate fund or providing a separate schedule in the financial statement to account for the entire PAI allocation. Recipients are not required to establish separate bank accounts to segregate funds allocated to PAI. Auditors are required to perform sufficient audit tests to enable them to render an opinion on the recipient's compliance with the requirements of this part.

(3) In private attorney models, attorneys may be reimbursed for actual costs and expenses. Attorney's fees paid may not exceed 50% of the local prevailing market rate for that type of service.

(4) All records pertaining to a recipient's PAI requirements which do not contain client confidences or secrets as defined by applicable state law shall be made available for inspection and review by LSC auditors and monitors during regular business hours.

§ 1614.4 Procedure.

(a) The recipient shall develop a plan and budget to meet the requirements of this part which shall be incorporated as a part of the refunding application or initial grant application. The budget shall be modified as necessary to fulfill this part. That plan shall take into consideration:

(1) The legal needs of eligible clients in the geographical area served by the recipient and the relative importance of those needs consistent with the priorities established pursuant to section 1007(a)(2)(C) of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(2)(C)) and part 1620 of the Regulations (45 CFR part 1620) adopted pursuant thereto;

(2) The delivery mechanisms potentially available to provide the opportunity for private attorneys to meet the established priority legal needs of eligible clients in an economical and effective manner; and

(3) The results of the consultation as required below.

(b) The recipient shall consult with significant segments of the client community, private attorneys, and bar associations, including minority and women's bar associations, in the recipient's service area in the development of its annual plan to provide for the involvement of private attorneys in the provision of legal assistance to eligible clients and shall document that each year its proposed annual plan has been presented to all local bar associations within the recipient's service area and shall summarize their response.

§ 1614.5 Prohibition of revolving litigation funds.

(a) A revolving litigation fund system is a system under which a recipient systematically encourages the acceptance of fee-generating cases as defined in § 1609.2 of these regulations by advancing funds to private attorneys to enable them to pay costs, expenses, or attorneys fees for representing clients.

(b) No funds received from the Legal Services Corporation shall be used to establish or maintain revolving litigation fund systems.

(c) The prohibition in paragraph (b) of this section does not prevent recipients from reimbursing or paying private attorneys for costs and expenses, provided:

(1) The private attorney is representing an eligible client in a matter in which representation of the eligible client by the recipient would be allowed under the Act and under the Corporation's Regulations; and

(2) The private attorney has expended such funds in accordance with a schedule previously approved by the recipient's governing body or, prior to initiating action in the matter, has requested the recipient to advance the funds.

(d) Nothing in this section shall prevent a recipient from recovering from a private attorney the amount advanced for any costs, expenses, or fees from an award to the attorney for representing an eligible client.

§ 1614.6 Waivers.

(a) While it is the expectation and experience of the Corporation that most basic field programs can effectively expend their PAI requirement, there are some circumstances, temporary or permanent, under which the goal of economical and effective use of Corporation funds will be furthered by a partial, or in exceptional circumstances, a complete waiver of the PAI requirement.

(b) A complete waiver shall be granted by the Office of Field Services (OFS) when the recipient shows to the satisfaction of OFS that:

(1) Because of the unavailability of qualified private attorneys, an attempt to carry out a PAI program would be futile; or

(2) All qualified private attorneys in the program's service area either refuse to participate or have conflicts generated by their practice which render their participation inappropriate.

(c) A partial waiver shall be granted by OFS when the recipient shows to the satisfaction of OFS that:

(1) The population of qualified private attorneys available to participate in the program is too small to use the full PAI allocation economically and effectively; or

(2) Despite the recipient's best efforts too few qualified private attorneys are

willing to participate in the program to use the full PAI allocation economically and effectively; or

(3) Despite a recipient's best efforts,—including, but not limited to , communicating its problems expending the required amount to OFS and requesting and availing itself of assistance and/or advice from OFS regarding the problem—expenditures already made during a program year are insufficient to meet the PAI requirement, and there is insufficient time to make economical and efficient expenditures during the remainder of a program year, but in this instance, unless the shortfall resulted from unforeseen and unusual circumstances, the recipient shall accompany the waiver request with a plan to avoid such a shortfall in the future; or

(4) The recipient uses a fee-for-service program whose current encumbrances and projected expenditures for the current fiscal year would meet the requirement, but its actual current expenditures do not meet the requirement, and could not be increased to do so economically and effectively in the remainder of the program year, or could not be increased to do so in a fiscally responsible manner in view of outstanding encumbrances; or

(5) The recipient uses a fee-for-service program and its PAI expenditures in the prior year exceeded the twelve and one-half percent (12½%) requirement but, because of variances in the timing of work performed by the private attorneys and the consequent billing for that work, its PAI expenditures for the current year fail to meet the twelve and one-half percent (12½%) requirement; or

(6) If, in the reasonable judgment of the recipient's governing body, it would not be economical and efficient for the recipient to expend its full 12½% of Corporation funds on PAI activities, provided that the recipient has handled and expects to continue to handle at least 12½% of cases brought on behalf of eligible clients through its PAI program(s).

(d) (1) A waiver of special accounting and bookkeeping requirements of this part may be granted by the Audit Division with the concurrence of OFS, if the recipient shows to the satisfaction of the Audit Division of OFS that such waiver will advance the purpose of this part as expressed in §§ 1614.1 and 1614.2.

(2) As provided in 45 CFR 1627.3(c) with respect to subgrants, alternatives to Corporation audit requirements or to the accounting requirements of this part may be approved for subgrants by the Audit Division with the concurrence of OFS; such alternatives for PAI subgrants shall be approved liberally where necessary to foster increased PAI participation.

(e) Waivers of the PAI expenditure requirement may be full or partial, that is, the Corporation may waive all or some of the required expenditure for a fiscal year.

(1) Applications for waivers of any requirement under this part may be for the current, or next fiscal year. All such applications must be in writing. Applications for waivers for the current fiscal year must be received by the Corporation during the current fiscal year.

(2) At the expiration of a waiver a recipient may seek a similar or identical waiver.

(f) All Waiver requests shall be addressed to the Office of Field Services (OFS) or the Audit Division as is appropriate under the preceding provisions of this Part. The Corporation shall make a written response to each such request postmarked not later than thirty (30) days after its receipt. If the request is denied, the Corporation will provide the recipient with an explanation and statement of the grounds for denial. If the waiver is to be denied because the information submitted is insufficient, the Corporation will inform the recipient as soon as possible, both orally and in writing, about what additional information is needed. Should the Corporation fail to so respond, the request shall be deemed to be granted.

§ 1614.7 Failure to comply.

(a) If a recipient fails to comply with the expenditure required by this part and if that recipient fails without good cause to seek a waiver during the term of the grant or contract, the Corporation shall withhold from the recipient's support payments an amount equal to

the difference between the amount expended on PAI and twelve and one-half percent (12½%) of the recipient's basic field award.

(b) If a recipient fails with good cause to seek a waiver, or applies for but does not receive a waiver, or receives a waiver of part of the PAI requirement and does not expend the amount required to be expended, the PAI expenditure requirement for the ensuing year shall be increased for that recipient by an amount equal to the difference between the amount actually expended and the amount required to be expended.

(c) Any funds withheld by the Corporation pursuant to this section shall be made available by the Corporation for use in providing legal services in the recipient's service area through PAI programs. Disbursement of these funds shall be made through a competitive solicitation and awarded on the basis of efficiency, quality, creativity, and demonstrated commitment to PAI service delivery to low-income people.

(d) The withholding of funds under this section shall not be construed as a termination of financial assistance under part 1606 of these regulations or a denial of refunding under part 1625 of these regulations.

PART 1615—RESTRICTIONS ON ACTIONS COLLATERALLY ATTACKING CRIMINAL CONVICTIONS

Sec.

AUTHORITY: Sec. 1007(b)(1); (42 U.S.C. 2996f(b)(1)).

SOURCE: 41 FR 38508, Sept. 10, 1976, unless otherwise noted.

§ 1615.1 Purpose.

This part prohibits the provision of legal assistance in an action in the nature of habeas corpus seeking to collaterally attack a criminal conviction.

§ 1615.2 Prohibition.

Except as authorized by this part, no Corporation funds shall be used to provide legal assistance in an action in the nature of habeas corpus collaterally attacking a criminal conviction if the action

(a) Is brought against an officer of a court, a law enforcement official, or a custodian of an institution for persons convicted of crimes; and

(b) Alleges that the conviction is invalid because of any alleged acts or failures to act by an officer of a court or a law enforcement official.

§ 1615.3 Application of this part.

This part does not prohibit legal assistance—

(a) To challenge a conviction resulting from a criminal proceeding in which the defendant received representation from a recipient pursuant to Corporation regulations; or

(b) Pursuant to a court appointment made under a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction, if authorized by the recipient after a determination that it is consistent with the primary responsibility of the recipient to provide legal assistance to eligible clients in civil matters.

PART 1616—ATTORNEY HIRING

Sec.

AUTHORITY: Secs. 1007(a)(8); 1006(b)(6); 1006(b)(4); (42 U.S.C. 2996f(a)(8); 2996e(b)(6); 2996e(b)(4)).

SOURCE: 41 FR 38509, Sept. 10, 1976, unless otherwise noted.

§ 1616.1 Purpose.

This part is designed to promote a mutually beneficial relationship between a recipient and the local Bar and community, and to insure that a recipient will choose highly qualified attorneys for its staff.

§ 1616.2 Definition.

Community, as used in this part, means the geographical area most closely corresponding to the area served by a recipient.

§ 1616.3 Qualifications.

A recipient shall establish qualifications for individual positions for attorneys providing legal assistance under the Act, that may include, among other relevant factors:

(a) Academic training and performance;

(b) The nature and extent of prior legal experience;

(c) Knowledge and understanding of the legal problems and needs of the poor;

(d) Prior working experience in the client community, or in other programs to aid the poor;

(e) Ability to communicate with persons in the client community, including, in areas where significant numbers of eligible clients speak a language other than English as their principal language, ability to speak that language; and

(f) Cultural similarity with the client community.

§ 1616.4 Recommendations.

(a) Before filling an attorney position, a recipient shall notify the organized Bar in the community of the existence of a vacancy, and of the qualifications established for it, and seek recommendations for attorneys who meet the qualifications established for the position.

(b) A recipient shall similarly notify and seek recommendations from other organizations, deemed appropriate by the recipient, that have knowledge of the legal needs of persons in the community unable to afford legal assistance.

§ 1616.5 Preference to local applicants.

When equally qualified applicants are under consideration for an attorney position, a recipient shall give preference to an applicant residing in the community to be served.

§ 1616.6 Equal employment opportunity.

A recipient shall adopt employment qualifications, procedures, and policies that meet the requirements of applicable laws prohibiting discrimination in employment, and shall take affirmative action to insure equal employment opportunity.

§ 1616.7 Language ability.

In areas where a significant number of clients speak a language other than English as their principal language, a recipient shall adopt employment policies that insure that legal assistance will be provided in the language spoken by such clients.

PART 1617—CLASS ACTIONS

Sec.

AUTHORITY: 29 U.S.C. 2996e(d)(5); 110 Stat. 1321 (1996).

SOURCE: 61 FR 41964, Aug. 13, 1996, unless otherwise noted.

§ 1617.1 Purpose.

This part is intended to ensure that LSC recipients do not initiate or participate in class actions.

§ 1617.2 Definitions.

(a) *Class action* means a lawsuit filed as, or otherwise declared by the court having jurisdiction over the case to be, a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure or the comparable State statute or rule of civil procedure applicable in the court in which the action is filed.

(b) *Initiating or participating in any class action* means any involvement at any stage of a class action prior to an order granting relief, including acting as amicus curiae, co-counsel or providing legal assistance to an individual client who seeks to withdraw from, intervene in, opt out of, modify, or challenge the adequacy of the representation of a class. It does not include non-adversarial monitoring of an order granting relief or individual representation of a client seeking to obtain the benefit of relief ordered by the court.

§ 1617.3 Prohibition.

Recipients are prohibited from initiating or participating in any class action.

§ 1617.4 Recipient policies and procedures.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part.

PART 1618—ENFORCEMENT PROCEDURES

Sec.
1618.1 Purpose.
1618.2 Definition.
1618.3 Complaints.
1618.4 Duties of Recipients.
1618.5 Duties of the Corporation.

AUTHORITY: Secs. 1006(b)(1), 1006(b)(2), 1006(b)(5), 1007(d), 1008(e); (42 U.S.C. 2996e(b)(1), 2996e(b)(2), 2996e(b)(5), 2996f(d), 2996g(e)).

SOURCE: 41 FR 51608, Nov. 23, 1976, unless otherwise noted.

§ 1618.1 Purpose.

In order to insure uniform and consistent interpretation and application of the Act, and to prevent a question of whether the Act has been violated from becoming an ancillary issue in any case undertaken by a recipient, this part establishes a systematic procedure for enforcing compliance with the Act.

§ 1618.2 Definition.

As used in this part, *Act* means the Legal Services Corporation Act or the rules and regulations issued by the Corporation.

§ 1618.3 Complaints.

A complaint of a violation of the Act by a recipient or an employee may be made to the recipient, the State Advisory Council, or the Corporation.

§ 1618.4 Duties of Recipients.

A recipient shall:

(a) Advise its employees of their responsibilities under the Act; and

(b) Establish procedures, consistent with the notice and hearing requirements of section 1011 of the Act, for determining whether an employee has violated a prohibition of the Act; and shall establish a policy for determining the appropriate sanction to be imposed for a violation, including:

(1) Administrative reprimand if a violation is found to be minor and unintentional, or otherwise affected by mitigating circumstances;

(2) Suspension and termination of employment; and

(3) Other sanctions appropriate for enforcement of the Act; but

(c) Before suspending or terminating the employment of any person for violating a prohibition of the Act, a recipient shall consult the Corporation to insure that its interpretation of the Act is consistent with Corporation policy.

§ 1618.5 Duties of the Corporation.

(a) Whenever there is reason to believe that a recipient or an employee may have violated the Act, or failed to comply with a term of its Corporation grant or contract, the Corporation shall investigate the matter promptly and attempt to resolve it through informal consultation with the recipient.

(b) Whenever there is substantial reason to believe that a recipient has persistently or intentionally violated the Act, or, after notice, has failed to take appropriate remedial or disciplinary action to insure compliance by its employees with the Act, and attempts at informal resolution have been unsuccessful, the Corporation may proceed to suspend or terminate financial support of the recipient pursuant to the procedures set forth in part 1612, or may take other action to enforce compliance with the Act.

PART 1619—DISCLOSURE OF INFORMATION

Sec.
1619.1 Purpose.
1619.2 Policy.
1619.3 Referral to the Corporation.
1619.4 Exemptions.

AUTHORITY: Sec. 1006(b)(1), (42 U.S.C. 2996e(b)(1)); sec. 1008(e), (42 U.S.C. 2996g(e)).

SOURCE: 42 FR 4848, Jan. 26, 1977, unless otherwise noted.

§ 1619.1 Purpose.

This part is designed to insure disclosure of information that is a valid subject of public interest in the activities of a recipient.

§ 1619.2 Policy.

A recipient shall adopt a procedure for affording the public appropriate access to the Act, Corporation rules, regulations and guidelines, the recipient's written policies, procedures, and guidelines, the names and addresses of the members of its governing body, and other materials that the recipient determines should be disclosed. The procedure adopted shall be subject to approval by the Corporation.

§ 1619.3 Referral to the Corporation.

If a person requests information, not required to be disclosed by this part, that the Corporation may be required to disclose pursuant to part 1602 of this chapter implementing the Freedom of Information Act, the recipient shall either provide the information or inform the person seeking it how to request it from the Corporation.

§ 1619.4 Exemptions.

Nothing in this part shall require disclosure of:

(a) Any information furnished to a recipient by a client;

(b) The work product of an attorney or paralegal;

(c) Any material used by a recipient in providing representation to clients;

(d) Any matter that is related solely to the internal personnel rules and practices of the recipient; or

(e) Personnel, medical, or similar files.

PART 1620—PRIORITIES IN USE OF RESOURCES

Sec.

AUTHORITY: Pub. L. 104–134, 110 Stat. 1321, 42 U.S.C. 2996f(a)(2).

SOURCE: 61 FR 45749, Aug. 29, 1996, unless otherwise noted.

§ 1620.1 Purpose.

This part is designed to provide guidance to recipients for setting priorities and to ensure that a recipient's governing body adopts written priorities for the types of cases and matters, including emergencies, to which the staff will limit its commitment of time and resources.

§ 1620.2 Definitions.

(a) A case is a form of program service in which an attorney or paralegal of a recipient provides legal services to one or more specific clients, including, without limitation, providing representation in litigation, administrative proceedings, and negotiations, and such actions as advice, providing brief services and transactional assistance, and assistance with individual Private Attorney Involvement (PAI) cases.

(b) A matter is an action which contributes to the overall delivery of program services but does not involve direct legal advice to or legal representation of one or more specific clients. Examples of matters include both direct services, such as community education presentations, operating pro se clinics, providing information about the availability of legal assistance, and developing written materials explaining legal rights and responsibilities; and indirect services, such as training, continuing legal education, general supervision of program services, preparing and disseminating desk manuals, PAI recruitment, intake when no case is undertaken, and tracking substantive law developments.

§ 1620.3 Establishing priorities.

(a) The governing body of a recipient must adopt procedures for establishing priorities for the use of all of its Corporation and non-Corporation resources and must adopt a written statement of priorities, pursuant to those procedures, that determines the cases and matters which are to be undertaken by the recipient.

(b) The procedures adopted must include an effective appraisal of the needs of eligible clients in the geographic area served by the recipient, and their relative importance, based on information received from potential or current eligible clients solicited in a

manner reasonably calculated to obtain the views of all significant segments of the client population. The appraisal must also include and be based on information from the recipient's employees, governing body members, the private bar, and other interested persons. The appraisal should address the need for outreach, training of the recipient's employees, and support services.

(c) The following factors should be among those considered by the recipient in establishing priorities:

(1) Suggested priorities promulgated by the Legal Services Corporation;

(2) The appraisal described in paragraph (b) of this section;

(3) The population of eligible clients in the geographic areas served by the recipient, including all significant segments of that population with special legal problems or special difficulties of access to legal services;

(4) The resources of the recipient;

(5) The availability of another source of free or low-cost legal assistance in a particular category of cases or matters;

(6) The availability of other sources of training, support, and outreach services;

(7) The relative importance of particular legal problems of the individual clients of the recipient;

(8) The susceptibility of particular problems to solution through legal processes;

(9) Whether legal efforts by the recipient will complement other efforts to solve particular problems in the area served;

(10) Whether legal efforts will result in efficient and economic delivery of legal services; and

(11) Whether there is a need to establish different priorities in different parts of the recipient's service area.

§ 1620.4 Establishing a procedure for emergencies.

(a) The governing body of a recipient must adopt procedures for undertaking emergency cases or matters that are not within the recipient's established priorities. An emergency may include a case or matter requiring immediate legal action, circumstances involving the necessities of life, a significant risk to the health or safety of the client or immediate family members, or issues that arise because of new and unforeseen circumstances, such as natural disasters or unanticipated changes in the law.

(b) Pursuant to procedures adopted by the governing body, the recipient's Executive Director or designee shall determine whether a particular case or matter not within the recipient's established priorities constitutes an emergency that may be undertaken by the recipient. The following factors may be among those considered by the Executive Director or designee:

(1) The time period in which action must be taken to protect the client's interest;

(2) The severity of the consequences to the client if no action is taken;

(3) The likelihood of success if urgent legal action is taken;

(4) The capacity of another source of free or low-cost legal assistance to undertake the particular case;

(5) The effect the problem presented by the emergency case or matter will have on the client community; and

(6) The consequences of diverting resources from existing priority cases or matters.

§ 1620.5 Annual review.

(a) Priorities shall be set periodically and shall be reviewed by the governing body of the recipient annually or more frequently if the recipient has accepted a significant number of emergency cases.

(b) The following factors should be among those considered in determining whether the recipient's priorities should be changed:

(1) The extent to which the objectives of the recipient's priorities have been accomplished;

(2) Changes in the resources of the recipient;

(3) Changes in the size, distribution, or needs of the eligible client population; and

(4) The volume of emergency cases or matters in a particular legal area since priorities were last reviewed.

§ 1620.6 Signed written agreement.

All staff who handle cases or matters, or are authorized to make decisions about case acceptance, must sign a simple agreement developed by the recipient which indicates that the signatory:

(a) Has read and is familiar with the priorities of the recipient;

(b) Has read and is familiar with the definition of an emergency situation and the procedures for dealing with an emergency that have been adopted by the recipient; and

(c) Will not undertake any case or matter for the recipient that is not a priority or an emergency.

§ 1620.7 Reporting.

(a) The recipient shall report to the recipient's governing body on a quarterly basis information on all emergency cases or matters undertaken that were not within the recipient's priorities, and shall include a rationale for undertaking each such case or matter.

(b) The recipient shall report annually to the Corporation, on a form provided by the Corporation, information on all emergency cases or matters undertaken that were not within the recipient's priorities.

(c) The recipient shall submit to the Corporation and make available to the public an annual report summarizing the review of priorities; the date of the most recent appraisal; the timetable for the future appraisal of needs and evaluation of priorities; mechanisms which will be utilized to ensure effective client participation in priority-setting; and any changes in priorities.

PART 1621—CLIENT GRIEVANCE PROCEDURE

Sec.

AUTHORITY: Sec. 1006(b)(1), 41 U.S.C. 2996e(b)(1); sec. 1006(b)(3), 42 U.S.C. 2996e(b)(3); sec. 1007(a)(1), 42 U.S.C. 2996f(a)(1).

SOURCE: 42 FR 37551, July 22, 1977, unless otherwise noted.

§ 1621.1 Purpose.

By providing an effective remedy for a person who believes that legal assistance has been denied improperly, or who is dissatisfied with the assistance provided, this part seeks to insure that every recipient will be accountable to those it is expected to serve, and will provide the legal assistance required by the Act.

§ 1621.2 Grievance Committee.

The governing body of a recipient shall establish a grievance committee or committees, composed of lawyer and client members of the governing body in approximately the same proportion in which they are on the governing body.

§ 1621.3 Complaints about legal assistance.

(a) A recipient shall establish procedures for determining the validity of a complaint about the manner or quality of legal assistance that has been rendered.

(b) The procedures shall provide at least:

(1) Information to a client at the time of the initial visit about how to make a complaint, and

(2) Prompt consideration of each complaint by the director of the recipient, or the director's designee, and, if the director of the recipient is unable to resolve the matter,

(3) An opportunity for a complainant to submit an oral and written statement to a grievance committee established by the governing body. The complainant may be accompanied by another person. Upon request, the recipient shall transcribe a brief written statement, dictated by the complainant, for inclusion in the recipient's complaint file.

(c) A file containing every complaint and a statement of its disposition shall be preserved for examination by the Corporation. The file shall include any written statement submitted by the complainant.

§ 1621.4 Complaints about denial of assistance.

A recipient shall establish a simple procedure for review of a decision that a person is financially ineligible, or

that assistance is prohibited by the Act or Corporation Regulations, or by priorities established by the recipient pursuant to section 1620. The procedure shall include information about how to make a complaint, adequate notice, an opportunity to confer with the director of the recipient or the director's designee, and, to the extent practicable, with a representative of the governing body.

PART 1622—PUBLIC ACCESS TO MEETINGS UNDER THE GOVERNMENT IN THE SUNSHINE ACT

AUTHORITY: Sec. 1004(g), Pub. L. 95–222, 91 Stat. 1619, (42 U.S.C. 2996c(g)).

SOURCE: 49 FR 30940, Aug. 2, 1984, unless otherwise noted.

§1622.1 Purpose and scope.

This part is designed to provide the public with full access to the deliberations and decisions of the Board of Directors of the Legal Services Corporation, committees of the Board, and state Advisory Councils, while maintaining the ability of those bodies to carry out their responsibilities and protecting the rights of individuals.

§1622.2 Definitions.

Board means the Board of Directors of the Legal Services Corporation.

Committee means any formally designated subdivision of the Board established pursuant to §1601.27 of the By-Laws of the Corporation.

Council means a state Advisory Council appointed by a state Governor or the Board pursuant to section 1004(f) of the Legal Services Corporation Act of 1974, 42 U.S.C. 2996c(f).

Director means a voting member of the Board or a Council. Reference to actions by or communications to a ''Director'' means action by or communications to Board members with respect to proceedings of the Board, committee members with respect to proceedings of their committees, and council members with respect to proceedings of their councils.

General Counsel means the General Counsel of the Corporation, or, in the absence of the General Counsel of the Corporation, a person designated by the President to fulfill the duties of the General Counsel or a member designated by a council to act as its chief legal officer.

Meetings means the deliberations of a quorum of the Board, or of any committee, or of a council, when such deliberations determine or result in the joint conduct or disposition of Corporation business, but does not include deliberations about a decision to open or close a meeting, a decision to withhold information about a meeting, or the time, place, or subject of a meeting.

Public observation means the right of any member of the public to attend and observe a meeting within the limits of reasonable accommodations made available for such purposes by the Corporation, but does not include any right to participate unless expressly invited by the Chairman of the Board of Directors, and does not include any right to disrupt or interfere with the disposition of Corporation business.

Publicly available for the purposes of §1622.6(e) means to be procurable either from the Secretary of the Corporation at the site of the meeting or from the Office of Government Relations at Corporation Headquarters upon reasonable request made during business hours.

Quorum means the number of Board or committee members authorized to conduct Corporation business pursuant to the Corporation's By-laws, or the number of council members authorized to conduct its business.

Secretary means the Secretary of the Corporation, or, in the absence of the Secretary of the Corporation, a person appointed by the Chairman of the meeting to fulfill the duties of the Secretary, or a member designated by a council to act as its secretary.

§ 1622.3 Open meetings.

Every meeting of the Board, a committee or a council shall be open in its entirety to public observation except as otherwise provided in § 1622.5.

§ 1622.4 Public announcement of meetings.

(a) Public announcement shall be posted of every meeting. The announcement shall include: (1) The time, place, and subject matter to be discussed;

(2) Whether the meeting or a portion thereof is to be open or closed to public observation; and

(3) The name and telephone number of the official designated by the Board, committee, or council to respond to requests for information about the meeting.

(b) The announcement shall be posted at least seven calendar days before the meeting, unless a majority of the Directors determines by a recorded vote that Corporation business requires a meeting on fewer than seven days notice. In the event that such a determination is made, public announcement shall be posted at the earliest practicable time.

(c) Each public announcement shall be posted at the offices of the Corporation in an area to which the public has access, and promptly submitted to the FEDERAL REGISTER for publication. Reasonable effort shall be made to communicate the announcement of a Board or committee meeting to the chairman of each council and the governing body and the program director of each recipient of funds from the Corporation, and of a council meeting to the governing body and program director of each recipient within the same State.

(d) An amended announcement shall be issued of any change in the information provided by a public announcement. Such changes shall be made in the following manner:

(1) The time or place of a meeting may be changed without a recorded vote.

(2) The subject matter of a meeting, or a decision to open or close a meeting or a portion thereof, may be changed by recorded vote of a majority of the Directors that Corporation business so requires and that no earlier announcement of the change was possible.

An amended public announcement shall be made at the earliest practicable time and in the manner specified by § 1622.4 (a) and (c). In the event that changes are made pursuant to § 1622.4(d)(2), the amended public announcement shall also include the vote of each Director upon such change.

[49 FR 30940, Aug. 2,1984, as amended at 50 FR 30714, July 29,1985]

§ 1622.5 Grounds on which meetings may be closed or information withheld.

Except when the Board or council finds that the public interest requires otherwise, a meeting or a portion thereof may be closed to public observation, and information pertaining to such meeting or portion thereof may be withheld, if the Board or council determines that such meeting or portion thereof, or disclosure of such information, will more probably than not:

(a) Relate solely to the internal personnel rules and practices of the Corporation;

(b) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act, 5 U.S.C. 552): Provided, That such statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(2) Establishes particular types of matters to be withheld;

(c) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(d) Involve accusing any person of a crime or formally censuring any person;

(e) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(f) Disclose investigatory records compiled for the purpose of enforcing the Act or any other law, or information which if written would be contained in such records, but only to the extent that production of such records or information would: (1) Interfere with enforcement proceedings,

(2) Deprive a person of a right to a fair trial or an impartial adjudication,

(3) Constitute an unwarranted invasion of personal privacy,

(4) Disclose the identity of a confidential source,

(5) Disclose investigative techniques and procedures, or

(6) Endanger the life or physical safety of law enforcement personnel;

(g) Disclose information the premature disclosure of which would be likely to frustrate significantly implementation of a proposed Corporation action, except that this paragraph shall not apply in any instance where the Corporation has already disclosed to the public the content or nature of its proposed action, or where the Corporation is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(h) Specifically concern the Corporation's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Corporation of a particular case involving a determination on the record after opportunity for a hearing.

§1622.6 Procedures for closing discussion or withholding information.

(a) No meeting or portion of a meeting shall be closed to public observation, and no information about a meeting shall be withheld from the public, except by a recorded vote of a majority of the Directors with respect to each meeting or portion thereof proposed to be closed to the public, or with respect to any information that is proposed to be withheld.

(b) A separate vote of the Directors shall be taken with respect to each meeting or portion thereof proposed to be closed to the public, or with respect to any information which is proposed to be withheld; except, a single vote may be taken with respect to a series of meetings or portions thereof which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series.

(c) Whenever any person's interest may be directly affected by a matter to be discussed at a meeting, the person may request that a portion of the meeting be closed to public observation by filing a written statement with the Secretary. The statement shall set forth the person's interest, the manner in which that interest will be affected at the meeting, and the grounds upon which closure is claimed to be proper under §1622.5. The Secretary shall promptly communicate the request to the Directors, and a recorded vote as required by paragraph (a) of this section shall be taken if any Director so requests.

(d) With respect to each vote taken pursuant to paragraphs (a) through (c) of this section, the vote of each Director participating in the vote shall be recorded and no proxies shall be allowed.

(e) With respect to each vote taken pursuant to paragraphs (a) through (c) of this section, the Corporation shall, within one business day, make publicly available:

(1) A written record of the vote of each Director on the question;

(2) A full written explanation of the action closing the meeting, portion(s) thereof, or series of meetings, with reference to the specific exemptions listed in §1622.5, including a statement of reasons as to why the specific discussion comes within the cited exemption and a list of all persons expected to attend the meeting(s) or portion(s) thereof and their affiliation.

[49 FR 30940, Aug. 2,1984, as amended at 50 FR 30714, July 29,1985]

§1622.7 Certification by the General Counsel.

Before a meeting or portion thereof is closed, the General Counsel shall publicly certify that, in his opinion, the meeting may be so closed to the public and shall state each relevant exemption. A copy of the certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting and the persons present, shall be retained by the Corporation.

§ 1622.8 Records of closed meetings.

(a) The Secretary shall make a complete transcript or electronic recording adequate to record fully the proceedings of each meeting or portion thereof closed to the public, except that in the case of meeting or any portion thereof closed to the public pursuant to paragraph (h) of § 1622.5, a transcript, a recording, or a set of minutes shall be made.

Any such minutes shall describe all matters discussed and shall provide a summary of any actions taken and the reasons therefor, including a description of each Director's views expressed on any item and the record of each Director's vote on the question. All documents considered in connection with any action shall be identified in the minutes.

(b) A complete copy of the transcript, recording, or minutes required by paragraph (a) of this section shall be maintained at the Corporation for a Board or committee meeting, and at the appropriate Regional Office for a council meeting, for a period of two years after the meeting, or until one year after the conclusion of any Corporation proceeding with respect to which the meeting was held, whichever occurs later.

(c) The Corporation shall make available to the public all portions of the transcript, recording, or minutes required by paragraph (a) of this section that do not contain information that may be withheld under § 1622.5. A copy of those portions of the transcript, recording, or minutes that are available to the public shall be furnished to any person upon request at the actual cost of duplication or transcription.

(d) Copies of Corporation records other than notices or records prepared under this part may be pursued in accordance with part 1602 of these regulations.

§ 1622.9 Emergency Procedures.

If, in the opinion of the Chairman, the Directors are rendered incapable of conducting a meeting by the acts or conduct of any members of the public present at the meeting, the Directors may thereupon determine by a recorded vote of the majority of the number of Directors present at the meeting that the Chairman or presiding officer of the Board shall have the authority to have such members of the public who are responsible for such acts or conduct removed from the meeting.

[50 FR 30714, July 29,1985]

§ 1622.10 Report to Congress.

The Corporation shall report to the Congress annually regarding its compliance with the requirements of the Government in the Sunshine Act, 5 U.S.C. 552(b), including a tabulation of the number of meetings open to the public, the number of meetings or portions of meetings closed to the public, the reasons for closing such meetings or portions thereof, and a description of any litigation brought against the Corporation under 5 U.S.C. 552b, including any costs assessed against the Corporation in such litigation.

PART 1623—PROCEDURES GOVERNING SUSPENSION OF FINANCIAL ASSISTANCE

Sec.

AUTHORITY: Secs. 1006(b)(1), 1011 (42 U.S.C. 2996e(b)(1), (2996j).

SOURCE: 43 FR 21883, May 22, 1978, unless otherwise noted.

§ 1623.1 Purpose.

By providing procedures for prompt review that will insure informed deliberation by the Corporation when there is reason to believe that financial assistance to a recipient should be suspended, this part seeks to avoid unnecessary disruption in the delivery of legal assistance to eligible clients.

§ 1623.2 Definition.

Suspension means any action temporarily suspending or curtailing financial assistance to a recipient in whole or in part prior to the expiration of the recipient's current grant from or contract with the Corporation.

§ 1623.3 Grounds for suspension.

Financial assistance provided to a recipient may be suspended when:

(a) There has been substantial failure by a recipient to comply with a provision of law, or a rule, regulation, or guideline issued by the Corporation, or a term or condition of the recipient's current grant from or contract with the Corporation; or

(b) There has been substantial failure by a recipient to provide high quality, economical, and effective legal assistance, as measured by generally accepted professional standards, the provisions of the Act, or a rule, regulation, or guideline issued by the Corporation.

(c) In the absence of unusual circumstances, suspension shall not take place unless the Corporation has given the recipient notice of its failure and an opportunity to take effective corrective action.

§ 1623.4 Suspension.

(a) When there is reason to believe that financial assistance to a recipient should be suspended, the Corporation shall serve a written preliminary determination on the recipient stating the grounds and effective date for the proposed suspension, and identifying, with reasonable specificity, any facts or documents relied upon as justification for the suspension. The preliminary determination shall also specify any corrective action that the recipient must take to avoid or end the suspension.

(b) The preliminary determination shall also advise the recipient that it may, within 5 days of receipt of the preliminary determination, request an informal meeting with the Corporation at which it may attempt to show that the proposed suspension should not become effective. The Corporation shall designate the place for such a meeting and shall set the time at least 5 days after the recipient's request is received. The preliminary determination shall also advise the recipient that, within 10 days of its receipt of the preliminary determination and without regard to whether it requested an informal meeting, it may submit written materials in opposition to the proposed suspension.

(c) The Corporation shall consider any written materials submitted by the recipient in opposition to the proposed suspension and any oral presentation or written materials submitted by the recipient at the informal meeting, if one is requested. If after considering these materials the Corporation concludes that the recipient has failed to show that the suspension should not become effective, it may suspend financial assistance to the recipient in whole or in part and under such terms and conditions as it deems proper.

(d) Written notice of the suspension shall be promptly transmitted to the recipient, and the suspension shall become effective when the notice is received by the recipient or on such later date as is specified in the notice.

(e) The Corporation employee ordering suspension may at any time rescind or modify the terms of the suspension and, on written notice to the recipient, reinstate the suspension without further proceedings under this part. In no event shall the total time of suspension exceed 30 days, unless the Corporation and the recipient agree to a continuation of the suspension for an additional period of time and without further proceedings under this part.

§ 1623.5 Time extension and waiver.

(a) Any period of time provided in this part, except the total time for suspension, may, upon good cause shown and determined, be extended by the person issuing the preliminary determination under § 1623.4 or by the President.

(b) Requests for extensions of time shall be considered in light of the overall objective that the procedures prescribed by this part ordinarily shall be concluded within 30 days of the preliminary determination.

(c) Any other provision of this part may be waived or modified by agreement of the recipient and the Corporation, or by the President upon good cause shown and determined.

§ 1623.6 Interim funding.

Failure by the Corporation to meet a time requirement of this part shall not entitle a recipient to continued funding. Pending the completion of suspension proceedings under this part, the Corporation shall provide the recipient with interim funding necessary to

maintain its current level and legal assistance activities under the Act.

PART 1624—PROHIBITION AGAINST DISCRIMINATION ON THE BASIS OF HANDICAP

Sec.
1624.1 Purpose.
1624.2 Application.
1624.3 Definitions.
1624.4 Discrimination prohibited.
1624.5 Accessibility of legal services.
1624.6 Employment.
1624.7 Self-evaluation.
1624.8 Enforcement.

AUTHORITY: 49 U.S.C. 794; 42 U.S.C. 2996f(a) (1) and (3).

SOURCE: 44 FR 55178, Sept. 25, 1979, unless otherwise noted.

§ 1624.1 Purpose.

The purpose of this part is to assist and provide guidance to legal services programs supported in whole or in part by Legal Services Corporation funds in removing any impediments that may exist to the provision of legal assistance to handicapped persons eligible for such assistance in accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. section 794 and with sections 1007(a) (1) and (3) of the Legal Services Corporation Act, as amended, 42 U.S.C. sections 2996f(a) (1) and (3), with respect to the provision of services to and employment of handicapped persons.

§ 1624.2 Application.

This part applies to each legal services program receiving financial assistance from the Legal Services Corporation.

§ 1624.3 Definitions.

As used in this part, the term:

(a) *Legal services program* means any recipient, as defined by §1600.1 of these regulations, or any other public or private agency, institution, organization, or other entity, or any person to which or to whom financial assistance is extended by the Legal Services Corporation directly or through another agency, institution, organization, entity or person, including any successor, assignee, or transferee of a legal services program, but does not include the ultimate beneficiary of legal assistance;

(b) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property;

(c)(1) *Handicapped person* means any person who: (i) Has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment;

(2) As used in paragraph (a)(1) of this section the phrase:

(i) *Physical or mental impairment* means: (A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities; The phrase includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism;

(ii) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

(iii) *Has a record of such impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities;

(iv) *Is regarded as having an impairment* means: (A) Has a physical or mental impairment that does not substantially limit major life activities but is treated by a legal services program as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairments; or (C) has none of the impairments defined in

paragraph (c)(2)(i) of this section but is treated by a legal services program as having such an impairment;

(d) *Qualified handicapped person* means: (1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question; (2) with respect to other services, a handicapped person who meets the eligibility requirements for the receipt of such services from the legal services program.

§1624.4 Discrimination prohibited.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination by any legal services program, directly or through any contractural or another arrangement.

(b) A legal services program may not deny a qualified handicapped person the opportunity to participate in any of its programs or activities or to receive any of its services provided at a facility on the ground that the program operates a separate or different program, activity or facility that is specifically designed to serve handicapped persons.

(c) In determining the geographic site or location of a facility, a legal services program may not make selections that have the purpose or effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity of the legal services program.

(d)(1) A legal services program that employs a total of fifteen or more persons, regardless of whether such persons are employed at one or more locations, shall provide, when necessary, appropriate auxiliary aids to persons with impaired sensory, manual or speaking skills, in order to afford such persons an equal opportunity to benefit from the legal services program's services. A legal services program is not required to maintain such aids at all times, provided they can be obtained on reasonable notice.

(2) The Corporation may require legal services programs with fewer than fifteen employees to provide auxiliary aids where the provision of such aids would not significantly impair the ability of the legal services program to provide its services.

(3) For the purpose of §1624.4(d) (1) and (2), auxiliary aids include, but are not limited to, brailled and taped material, interpreters, telecommunications equipment for the deaf, and other aids for persons with impaired hearing, speech or vision.

(e) A legal services program shall take reasonable steps to insure that communications with its applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

(f) A legal services program may not deny handicapped persons the opportunity to participate as members of or in the meetings or activities of any planning or advisory board or process established by or conducted by the legal services program, including but not limited to meetings and activities conducted in response to the requirements of part 1620 of these regulations.

§1624.5 Accessibility of legal services.

(a) No qualified handicapped person shall, because a legal services program's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination by any legal services program.

(b) A legal services program shall conduct its programs and activities so that, when viewed in their entirety, they are readily accessible to and usable by handicapped persons. This paragraph does not necessarily require a legal services program to make each of its existing facilities or every part of an existing facility accessible to and usable by handicapped persons, or require a legal services program to make structural changes in existing facilities when other methods are effective in achieving compliance. In choosing among available methods for meeting the requirements of this paragraph, a legal services program shall give priority to those methods that offer legal services to handicapped persons in the most integrated setting appropriate.

(c) A legal services program shall, to the maximum extent feasible, insure

that new facilities that it rents or purchases are accessible to handicapped persons. Prior to entering into any lease or contract for the purchase of a building, a legal services program shall submit a statement to the appropriate Regional Office certifying that the facilities covered by the lease or contract will be accessible to handicapped persons, or if the facilities will not be accessible, a detailed description of the efforts the program made to obtain accessible space, the reasons why the inaccessible facility was nevertheless selected, and the specific steps that will be taken by the legal services program to insure that its services are accessible to handicapped persons who would otherwise use that facility. After a statement certifying facility accessibility has been submitted, additional statements need not be resubmitted with respect to the same facility, unless substantial changes have been made in the facility that affect its accessibility.

(d) A legal services program shall ensure that new facilities designed or constructed for it are readily accessible to and usable by handicapped persons. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to make the altered facilities readily accessible to and usable by handicapped persons.

§ 1624.6 Employment.

(a) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment by any legal services program.

(b) A legal services program shall make all decisions concerning employment under any program or activity to which this part applies in a manner that insures that discrimination on the basis of handicap does not occur, and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(c) The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not adminstered by the legal services program;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(d) A legal services program may not participate in any contractual or other relationship with persons, agencies, organizations or other entities such as, but not limited to, employment and referral agencies, labor unions, organizations providing or administering fringe benefits to employees of the legal services program, and organizations providing training and apprenticeship programs, if the practices of such person, agency, organization, or other entity have the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this paragraph.

(e) A legal services program shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the accommodation would impose an undue hardship on the operation of the program.

(1) For purposes of this paragraph (e), reasonable accommodation may include (i) making facilities used by employees readily accessible to and usable by handicapped persons, and (ii) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the

provision of readers or interpreters, and other similar actions.

(2) In determining whether an accommodation would impose an undue hardship on the operation of a legal services program, factors to be considered include, but are not limited to, the overall size of the legal services program with respect to number of employees, number and type of facilities, and size of budget, and the nature and costs of the accommodation needed.

(3) A legal services program may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is a need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

(f) A legal services program may not use employment tests or criteria that discriminate against handicapped persons, and shall insure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

(g) A legal services program may not conduct a pre-employment medical examination or make a pre-employment inquiry as to whether an applicant is a handicapped person or as to the nature or severity of a handicap except under the circumstances described in 45 CFR 84.14(a) through (d)(2). The Corporation shall have access to relevant information obtained in accordance with this section to permit investigations of alleged violations of this part.

(h) A legal services program shall post in prominent places in each of its offices a notice stating that the legal services program does not discriminate on the basis of handicap.

(i) Any recruitment materials published or used by a legal services program shall include a statement that the legal services program does not discriminate on the basis of handicap.

§1624.7 Self-evaluation.

(a) By January 1, 1980, a legal services program shall evaluate, with the assistance of interested persons including handicapped persons or organizations representing handicapped persons, its current facilities, policies and practices and the effects thereof to determine the extent to which they may or may not comply with the requirements of this part and the cost of structural or other changes that would be necessary to make each of its facilities accessible to handicapped persons.

(b) The results of the self-evaluation, including steps the legal services program plans to take to correct any deficiencies revealed and the timetable for completing such steps, shall be made available for review by the Corporation and interested members of the public.

§1624.8 Enforcement.

The procedures described in part 1618 of these regulations shall apply to any alleged violation of this part by a legal services program.

PART 1625—DENIAL OF REFUNDING

Sec.

AUTHORITY: Sec. 1006(b)(1) and (3), 1007(a)(1), (3) and (9), 1007(d) and (e), 1008(e), and 1011(2) of the Legal Services Corporation Act, as amended, (42 U.S.C. 2996e(b)(1) and (3), 2996f (a)(1), (3) and (9), 2996f(d) and (e), 2996g(e) and 2996(j); Pub. L. 98–166, 97 Stat. 1071; Pub. L. 98–411, 98 Stat. 1545; Pub. L. 99–180, 99 Stat. 1136.

SOURCE: 51 FR 15899, Apr. 29, 1986, unless otherwise noted.

§1625.1 Purpose.

This part is intended to provide timely, full, fair, and impartial procedures for allowing a recipient to show cause why its funding should be continued when the Corporation has made a preliminary determination that an application for refunding of a grant or contract should be denied. This part is further intended to provide for completion of these procedures in a timely manner so that funding issues are expeditiously resolved so as to avoid unnecessary and

protracted disruption in the delivery of legal services to eligible clients.

§ 1625.2 Definitions.

Denial of refunding means a decision that, after the expiration of a grant or contract, a recipient:

(a) Will not be provided financial assistance; or

(b) Will have its annual level of financial support reduced to an extent that is not required either by a change of law, or a reduction in the Corporation's appropriation that is apportioned among all recipients of the same class in proportion to their current level of funding, or by the uniform application of a statistical formula for the reallocation of funding among the members of the same class, and is more than 10 percent below the recipient's annual level of financial assistance under its current grant or contract.

§ 1625.3 Grounds for denial of refunding.

Refunding may be denied when:

(a) Denial is required by, or will implement, a provision of law, a Corporation rule, regulation, guideline, or instruction that is generally applicable to all recipients of the same class, or a funding policy, standard, or criterion approved by the Board; or

(b) There has been significant failure by a recipient to comply with a provision of law, or a rule, regulation, guideline, or instruction issued by the Corporation, or a term or condition of a current or prior grant from or contract with the Corporation; provided, however, that a recipient's failure to comply with any of the requirements in this paragraph at a time when the requirement was not in effect or at a time more than 6 years prior to the date the recipient receives notice of the failure pursuant to § 1625.4 shall not be a basis for denial of refunding; or

(c) There has been significant failure by a recipient to use its resources to provide economical and effective legal assistance of highly quality as measured by generally accepted professional standards, the provisions of the act, or a rule, regulation, or guideline issued by the Corporation. If the recipient could not reasonably be expected to have prevented or corrected its failure without notice from the Corporation and an opportunity to have taken effective corrective action, refunding shall not be denied for this cause unless the Corporation has given the recipient such notice and opportunity; or

(d) The Corporation finds that another organization, whether a current recipient or not, could better serve eligible clients in the recipient's service area.

§ 1625.4 Notice.

When there is reason to believe that refunding should be denied, the Corporation shall serve a written notice upon the recipient, and the Chairperson of its governing board, which shall include:

(a)(1) A short and plain statement, in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances, of the factual grounds for the denial of refunding;

(2) It the ground specified in § 1625.3(d) is asserted, the statement shall identify the other organization and specify the basis for the Corporation's assertion that it could better and more economically serve eligible clients;

(b) An affidavit or affidavits covering the direct testimony of each witness upon whom Corporation's counsel relies; such affidavit(s) shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein; sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be appended thereto; depositions, if available, shall be included;

(c) A memorandum of points of law and authorities showing with particularity:

(1) That the affidavit(s), paper(s), and deposition testimony specified in paragraph (b) of this section constitute evidence of such discrete factual allegations as were identified in paragraph (a)(1) of this section and as are sufficient under applicable law to support denial of refunding;

(2) The legal standards, rulings, statutes, regulations, or decisional law upon which the Corporation relies in

advancing its theories or arguments in support of denial of refunding with particularized reference and adequate citation to competent authority; and

(3) As proximately as reasonably possible, the logical nexus and points of reference among (i) affidavit(s), paper(s), and deposition testimony specified in paragraph (b) of this section,

(ii) The factual grounds as identified in enumerated paragraphs specified by paragraph (a)(1) of this section, and

(iii) The legal theories or arguments advanced by the Corporation to justify denial of refunding.

(d) A directive to show cause, signed by an official of the Corporation other than the President, which shall inform the recipient that, if within 30 days of the recipient's receipt of this notice the Corporation receives a request for a hearing as specified in §1625.5 of this part and accompanied or preceded by all documents specified by paragraph (f) of this section, a hearing will be held; the directive shall identify;

(1) The name, business address, telephone number, and brief summary of professional qualifications of the hearing examiner and a statement that the examiner supports the purposes of the Act;

(2) The name, address, and phone number of the Corporation's counsel;

(3) The time and place of the prehearing conference and the last date upon which it may be held, which date shall be no more than 37 days after the date of the notice; and

(4) The time and place of the hearing and the last date on which it can start, which date shall be no more than 44 days after the date of the notice;

(e) A copy of these procedures as contained in Part 1625.

(f) A requirement, signed by an official of the Corporation other than the President, may be included that the recipient produce a specific document or documents in its possession, custody, or control no later than the time the recipient requests a hearing or produce a person in its employ to testify in a pre-hearing deposition at a date (subsequent to the recipient's request for a hearing), place, and time to be specified in the requirement or to be available to testify at the show cause hearing; provided, however, that the recipient may serve a motion within 10 days of its receipt of the notice, for the hearing examiner to limit or quash the requirement; the hearing examiner shall rule on such motion within 7 days; if an objection to the hearing examiner, filed pursuant to §1625.6(b) has delayed such ruling, the hearing examiner shall promptly rule when the objection is resolved.

§1625.5 Request for hearing.

Within 30 days of receipt of the notice, the recipient shall serve upon the Corporation a request for a hearing, which must include:

(a) A short and plain statement in numbered paragraphs, that is either an admission or a denial of each of the numbered paragraphs in the notice; any averment in the notice which is not specifically denied is deemed admitted;

(b) A short and plain statement, in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances, of all factual grounds on which the recipient will rely to show cause why refunding should not be denied;

(c) An affidavit or affidavits covering the direct testimony of each witness upon whom recipient's counsel relies and appending all exhibits to such testimony; such affidavit(s) shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein; sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be appended thereto; depositions, if available, shall be included; the recipient, must set forth by affidavit, sworn or certified copies of papers, and depositions, specific facts showing that there is a genuine issue of material fact for a show cause hearing;

(d) A memorandum of points and authorities showing that the Corporation has failed to provide affidavits or other evidence sufficient to deny refunding or that the affidavit(s) specified in paragraph (c) of this section constitute evidence of facts necessary to show

cause why refunding should not be denied under applicable legal standards.

(e) The recipient may serve a request on the hearing examiner that the Corporation be required, upon sufficient notice, to produce a specific document or documents in the possession, custody, or control of the Corporation or of another organization identified under §1625.4(a)(2) or produce a person in its employ (or that of such other organization) to testify in a pre-hearing deposition at a date, place, and time to be specified in the requirement or to be available to testify at the show cause hearing.

§1625.6 Hearing examiner.

(a) The hearing examiner shall be appointed by the President, and shall be a person who is familiar with legal services and supportive of the purposes of the Act, who is independent, and who is not an employee of the Corporation.

(b) Within 5 days of receipt of notice of the name of the hearing examiner, the recipient may file a written notice that it objects to the hearing examiner on the basis that this person does not fit the criteria of paragraph (a) of this section or has made statements or taken actions indicating personal bias against the recipient. The recipient will be granted a 5-day extension for presenting the basis of its objection if it files a timely notice of objection and a statement as to why it is unable with due diligence to present the basis of its objection without the extension.

(c) The President shall consider the recipient's objection(s) with any supporting documentation and, within 10 days thereafter, issue a written notice of a decision either to retain or replace the hearing examiner.

(d) No objection to the appointment of a hearing examiner may be made unless presented in the manner specified in this section.

§1625.7 Pre-hearing procedures.

(a)(1) On or before the date it requests a hearing, the recipient may serve a motion for an interim decision that the notice fails to state an adequate basis for the denial of its application for refunding. The hearing examiner shall rule on such motion within 7 days and shall grant the motion if he or she finds that the facts sworn to in the notice do not provide an adequate basis to deny the application for refunding.

(2) If the recipient fails to make a request for hearing in such a timely fashion that it is received by the Corporation within 30 days of receipt of the notice by the recipient, the recipient shall be deemed to have waived its right to a hearing and a final decision shall be entered by the President.

(3) If the recipient makes timely request for a hearing, the hearing examiner may, *sua sponte* or on the motion of a party, review the notice, the request for a hearing, and all documents submitted by the recipient pursuant to requirement(s) issued pursuant to §1625.4(f) to determine before the date set for the hearing whether there is any genuine issue as to any material fact and whether a party is entitled to summary judgment or partial summary judgment as a matter of law. If, considering the papers in the light most favorable to the opposing party, the hearing examiner finds that the parties' submissions, admissions on file, affidavits, and any other matter on the record show that there is no genuine issues as to any material fact and that either party is entitled to summary judgment as a matter of law, the hearing examiner shall issue to the President a written initial decision pursuant to §1625.10(b). If such a decision with a partial summary judgment should become final pursuant to §1625.11, the hearing examiner may exclude further evidence relevant only to an issue or issues resolved by such decision.

(b) If the recipient makes a timely request for a hearing, a pre-hearing conference shall be held within 7 days. At least 24 hours prior to the pre-hearing conference, each party shall cause to be delivered in person to the hearing examiner and counsel for the opposing party a list including all its affiants it intends to call for direct testimony, all the other party's affiants it will require the party to produce for cross-examination, and all other persons who are to testify on direct or cross-examination. For each person on its list, the party will indicate whether the person

will be called for direct testimony or for cross-examination and whether the party will require the opposing party to produce the witness (and, if so, the basis). At the pre-hearing conference, the matters to be considered shall include:

(1) Whether summary judgment or partial summary judgment ought to be issued;

(2) Proposals to define and narrow the issues;

(3) Efforts to stipulate the facts, in whole or in part;

(4) The order of presentation of exhibits and witnesses, along with their number and identity;

(5) The possibility of presenting the case on written submission or oral argument;

(6) Any necessary variation in the date, time, and place of the hearing;

(7) The possibility of settlement; and

(8) Such other matters as may be appropriate.

(c) (1) The hearing examiner may establish specific procedures consistent with this part for conduct of the show cause hearing.

(2) The hearing examiner may require or permit written submission of additional statements discussing any matter described in paragraph (b) of this section as well as any other arguments and supporting material at any time prior to completion of the show cause hearing.

(3) The hearing examiner may issue appropriate protective orders to prohibit the parties from disseminating evidence to other than specifically named individuals or such other restrictions as may be necessary to protect client confidences.

(4) The hearing examiner may not consider any issue not necessary for a determination of whether the recipient's refunding application will be denied.

(5) The only two parties to the proceeding will be the Corporation and the recipient; provided, however, that a state support center which is a subgrantee or a subrecipient as of the time of the effective date of this regulation may be joined as a party by the hearing examiner but only during the remaining term of such existing subgrant or other agreement.

(6) The hearing examiner shall require each party to make arrangements for the testimony and cross-examination of the witnesses and affiants it will rely upon and bear the expenses associated with the testimony.

(d)(1) The hearing examiner may, at any time prior to the completion of the hearing, require either party, upon sufficient notice, to produce a relevant document in its possession, custody or control; the hearing examiner may require either party to produce a person in its employ to testify at the hearing.

(2) The hearing examiner shall not issue such requirements at the request of the Corporation's counsel if request is not made within seven days of the Corporation's receipt of the request for a hearing, or at the request of the recipient, if request is not made at or before the time it makes a request for a hearing, unless the requesting party can show that it could not have anticipated its need to request the requirement and failure to issue the requirement would cause a manifest injustice.

(3) In proceedings under §1625.3(d), the hearing examiner may likewise require the Corporation to produce a document in the possession, custody or control of another organization identified pursuant to §1625.4(a)(2) or a person in the employ of such other organization, subject to the sanctions set forth in §1625.8(f).

(4) The hearing examiner shall rule on motions respecting requirements for the production of documents or witnesses within 7 days.

§1625.8 Conduct of the hearing.

(a) The show cause hearing shall be held within 7 days after the pre-hearing conference in or near a city having an airport with regularly scheduled airline service and convenient to the Corporation, to the recipient, the community it serves, and to witnesses determined by the hearing examiner to be necessary for the show cause hearing.

(b) The hearing examiner shall preside over the show cause hearing, avoid delay, maintain order, conduct a full and fair show cause hearing, and insure that an adequate record of the facts and issues is made.

(c) The show cause hearing shall be open to the public, unless, in the interests of justice or maintaining order, the hearing examiner shall determine otherwise.

(d) (1) Since each party will have presented the direct testimony of its witnesses by their affidavits, the show cause hearing will be limited, except as hereinafter provided, to cross-examination of the other party's affiants, examination of those employee(s) of the other party from whom the party was unable, despite due diligence, to obtain affidavit(s) or pre-hearing deposition(s), and rebuttal testimony (if allowed).

(2) The recipient will proceed first and will be allowed a total of up to 7 days to cross-examine the Corporation's affiant(s) or to present testimony from the Corporation's or the other organization's employee(s).

(3) The Corporation will then be allowed a total of up to 7 days to cross-examine the recipient's affiant(s), to present testimony from the recipient's employee(s), or to adduce rebuttal testimony.

(4) The recipient will then be allowed a total of up to one day of sur-rebuttal testimony.

(5) During the time allotted to a party, it may present its affiant(s) for direct testimony limited to the scope of the respective affidavits(s) and for cross-examination by the opposing party at that time.

(6) The hearing examiner will allow a total of up to one day divided evenly between the parties for closing arguments.

(e)(1) If either party fails, without good cause, to produce a person or document required to be produced under §§ 1625.4(f), 1625.5(e), or 1625.7(d), the hearing examiner may make a finding adverse to the party or any lesser determination.

(2) If a document is withheld on the basis of privilege, the hearing examiner may require the party to provide a version of the document that does not contain privileged information, explain the basis of the withholding, and, if it appears that the privilege is not asserted in good faith or is asserted in error, require production of the document for *in camera* inspection. After such inspection, the hearing examiner may issue such finding or order as the facts may warrant. The hearing examiner shall not disclose to the President of the Corporation information on which a claim of privilege or confidentiality is made.

(3) A recipient may neither introduce into the record nor rely upon any statement by a witness, any document, or other evidence if the Corporation, subsequent to the effective date of this regulation, had requested the recipient to arrange for that witness to cooperate in an interview or to produce the document or other evidence prior to issuance of the notice, unless the recipient is able to show good cause for its failure to comply with the request at an earlier date than it did.

(4) No adverse inference may be made if a party fails to produce a document which is not in the party's possession, custody, or control or that of another organization that is actually controlled by the party (or, for the Corporation, another organization identified under § 1625.4(a)(2)); no adverse inference may be made if a party fails to produce a witness that is not an employee of the party or of another organization that is actually controlled by the party or, for the Corporation, another organization identified under § 1625.4(a)(2).

(f) Technical rules of evidence shall not apply. The hearing examiner shall make any procedural or evidentiary ruling that may help to insure full disclosure of the facts, to maintain order, or to avoid delay. Irrelevant, immaterial, repetitious or unduly prejudicial matter may be excluded.

(g)(1) Official notice may be taken of published policies, rules, regulations, guidelines, and instructions of the Corporation, of any matter of which judicial notice may be taken in Federal court, or of any other matter whose existence, authenticity, or accuracy is not open to serious question.

(2) The validity of rules, regulations, guidelines and instructions duly published under § 1008(e) of the Act may be challenged only in a complete brief served no later than the request for a hearing; no argument which could have been included in such a brief, but was not, may be raised at a later time.

(h) The hearing will be recorded at Corporation expense. The Corporation will send one copy of the transcript to the recipient and the hearing examiner as soon as it is received.

(i) At the discretion of the hearing examiner, the recipient and the Corporation may be required or allowed to submit post-hearing briefs or proposed findings and conclusions. The recipient's brief shall be served within 5 days of the close of the hearing and the Corporation's 4 days thereafter. Either party should note any relevant transcript errors in an addendum to its post-hearing brief (or if no brief will be submitted, in a letter submitted within the time limit set for a brief; if the transcript or a part of the transcript is not received 4 or more days before the time set for its brief, errors must be noted within 4 days of receipt of the transcript or part of the transcript).

(j) The transcript and any post-hearing briefs or letters will become part of the record.

(k) The Federal Rules of Civil Procedure and the Administrative Procedure Act shall provide guidance for all actions under this part when relevant procedures or rules therein are not inconsistent with the provisions of this part or of relevant laws specifically applicable to such an action.

§ 1625.9 Burden of persuasion.

The recipient shall have the ultimate burden of persuasion by a preponderance of the evidence on the record that the application for refunding should not be denied. If the Corporation has asserted, as a ground for the denial of the application for refunding, the grounds specified in:

(a) Section 1625.3(a), the recipient must establish by a preponderance of the evidence on the record that it is not in a class of recipients affected by the law, the Corporation's rule, regulation, guideline, or instruction, or a funding policy, standard, or criterion approved by the Board or that the proposed action is not required by or will not implement such policy;

(b) Section 1625.3(b), the recipient must establish by a preponderance of the evidence on the record that:

(1) It has complied during the specified period of time in all respects with each specified provision of law, with each specified provision of the Corporation's rules, regulations, guidelines, and instructions, and with each specified term and condition of current or prior grants from, or contracts with, the Corporation as specified in the notice; or

(2) All of its violations are merely minor, technical or insignificant;

(c) Section 1625.3(c), the recipient must establish by a preponderance of the evidence on the record that:

(1) It has provided economical and effective legal assistance of high quality as measured by generally accepted professional standards, the provisions of the act, or a rule, regulation, or guideline issued by the Corporation; or

(2) The Corporation has not given the recipient prior notice of its failure and an opportunity to take effective corrective action and the recipient could not reasonably be expected to have prevented or corrected its failure without notice from the Corporation and an opportunity to have taken effective corrective action before it received the notice specified in § 1625.4 of this part;

(d) Section 1625.3(d), the recipient must establish by a preponderance of the evidence on the record that it could serve eligible clients in its service area better and more economically than the other organization specified in the notice.

§ 1625.10 Initial decision.

(a) Within 16 days of the completion of the hearing, the hearing examiner shall cause an initial decision to be served upon the parties:

(1) Granting refunding; or

(2) Granting refunding subject to any modification or condition that may appear necessary and appropriate on the basis of information disclosed at the hearing or adduced from the record; or

(3) Denying refunding.

(b) The initial decision shall be a part of the record and shall include a statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record.

(c) Findings of fact shall be based solely on evidence disclosed at the hearing or adduced from the record or

on matters of which official notice is taken.

§ 1625.11 Final decision.

(a) If neither the Corporation's counsel nor the recipient requests review by the President, the initial decision shall become final 7 days after receipt by the recipient.

(b) The recipient or the Corporation's counsel may seek review by the President of the initial decision. A request shall be made in writing to the President and the other party shall be served within 7 days of receipt by the party of the initial decision, and shall state in detail the reasons for seeking review.

(c) Within 7 days after receipt of a request for review of the initial decision, the President shall adopt, modify or reverse the initial decision, or shall direct further consideration of the matter. In the event of modification or reversal, the President's decision shall conform to the requirements of § 1625.10(b).

(d) A decision by the President shall become final upon service on the recipient.

§ 1625.12 Time and waiver.

(a) *Computation of time.* In computing any period of time prescribed or allowed by this part or by order of the President or the hearing examiner, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. All periods shall otherwise include Saturdays, Sundays, and legal holidays. A deadline for a party or the hearing examiner to submit a document is met only if the document is actually received by counsel for the other party and by the hearing examiner by the end of the relevant time period.

(b) *Enlargement of time.* The President or the hearing examiner may enlarge any period of time on agreement of the parties if, and only if, the President or the hearing examiner makes a determination in writing or on the record either that:

(1) The enlargement will not prevent completion of the hearing within 60 days from receipt of the notice by the recipient or prevent the President from reaching a final decision—with at least 7 days to consider the request for review—within 90 days from receipt of notice by the recipient; or

(2) The existence of extraordinary circumstances require the enlargement of time to prevent manifest injustice.

(c) *Reduction of time.* On agreement of the parties and the hearing examiner, any period of time may be shortened.

(d) Failure by the Corporation to meet a time requirement of this part shall not entitle a recipient to refunding of its grant or contract.

(e) Any provision of the rules in this part, excepting those in § 1625.12(b), may be waived or modified:

(1) By the hearing examiner with the assent of the recipient and counsel for the Corporation; or

(2) By the President for good cause shown.

§ 1625.13 Right to counsel.

At a hearing under § 1625.8, the Corporation and the recipient each shall be entitled to be represented by counsel, or by an employee.

§ 1625.14 Reimbursement.

If refunding is granted after a notice has been issued under § 1625.4, a recipient shall be entitled to receive reimbursement from the Corporation for reasonable and actual expenses including attorney's fees up to the hourly equivalent of the rate of level V of the executive schedule specified in section 5316, of title 5, United States Code, that were required in connection with proceedings under this part, to the extent it has prevailed and where the hearing examiner finds the Corporation's position to have been substantially without merit.

§ 1625.15 Interim funding.

Pending a final determination under this part, the Corporation shall provide the recipient with interim funding necessary to maintain its current level of legal assistance activities for eligible clients under the Act.

§1625.16 Termination funding.

After a final decision to deny refunding, and without regard to whether a hearing has occurred, the Corporation may authorize temporary funding if necessary to enable a recipient to close or transfer current matters in a manner consistent with the professional responsibility of the recipient and the recipient's attorneys to their present clients.

PART 1626—RESTRICTIONS ON LEGAL ASSISTANCE TO ALIENS

Sec.
1626.1 Purpose.
1626.2 Definitions.
1626.3 Prohibition.
1626.4 Alien status and eligibility.
1626.5 Verification of citizenship and eligible alien status.
1626.6 Change in circumstances.
1626.7 Special eligibility questions.
1626.8 H–2 agricultural workers.
1626.9 Replenishment agricultural workers.
1626.10 Recipient policies, procedures and recordkeeping.

AUTHORITY: Pub. L. 104–134, 110 Stat. 1321.

SOURCE: 61 FR 45751, Aug. 29, 1996, unless otherwise noted.

§1626.1 Purpose.

This part prohibits recipients from providing legal assistance for or on behalf of ineligible aliens. It is also designed to assist recipients in determining the eligibility and immigration status of persons who seek legal assistance and to provide guidelines for referral of ineligible persons.

§1626.2 Definitions.

(a) Eligible alien means a person who is not a U.S. citizen but who meets the requirements of §1626.4.

(b) Ineligible alien means a person who is not a U.S. citizen and who does not meet the requirements of §1626.4.

(c) Rejected refers to an application for adjustment of status that has been denied by the Immigration and Naturalization Service (INS) and is not subject to further administrative appeal.

(d) To provide legal assistance on behalf of an ineligible alien is to render legal assistance to an eligible client which benefits an ineligible alien and does not affect a specific legal right or interest of the eligible client.

§1626.3 Prohibition.

Recipients may not provide legal services for or on behalf of an ineligible alien beyond normal intake and referral services.

§1626.4 Alien status and eligibility.

Subject to all other eligibility requirements and restrictions of the LSC Act and regulations and other applicable law, a recipient may provide legal assistance to an alien who is present in the United States and who is within one of the following categories:

(a) An alien lawfully admitted for permanent residence as an immigrant as defined by section 1101(a)(20) of the Immigration and Nationality Act (INA) (8 U.S.C. 1101(a)(20));

(b) An alien who is either married to a United States citizen or is a parent or an unmarried child under the age of 21 of such a citizen and who has filed an application for adjustment of status to permanent resident under the Immigration and Nationality Act, and such application has not been rejected;

(c) An alien who is lawfully present in the United States pursuant to an admission under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157 relating to refugee admissions) or who has been granted asylum by the Attorney General under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), or who is lawfully present in the United States as a result of being granted conditional entry pursuant to section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic natural calamity;

(d) An alien who is lawfully present in the United States as a result of the Attorney General's withholding of deportation pursuant to section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h)); or

(e) An alien who meets the requirements of §1626.7, 1626.8 or 1626.9.

§ 1626.5 Verification of citizenship and eligible alien status.

(a) A citizen seeking representation shall attest in writing in a form approved by the Corporation to the fact of his or her United States citizenship. Verification of citizenship shall not be required unless a recipient has reason to doubt that a person is a United States citizen.

(1) If verification is required, a recipient shall accept the original or a certified copy of any of the following documents as evidence of citizenship:

(i) United States passport;

(ii) Birth certificate;

(iii) Naturalization certificate;

(iv) United States Citizenship Identification Card (INS Form 1–197); and

(v) Baptismal certificate showing place of birth within the United States and date of baptism within two months after birth.

(2) If a person is unable to produce any of the documents in paragraph (a)(1) of this section, he or she may submit a notarized statement signed by a third party, who shall not be an employee of the recipient and who can produce proof of that party's own United States citizenship, that the person seeking legal assistance is a United States citizen.

(b) An alien seeking representation shall submit appropriate documents to verify eligibility. A recipient shall accept originals of any of the following documents as proof of eligibility:

(1) An alien in the category specified in § 1626.4(a) shall present an Alien Registration Receipt Card (INS Forms 1–151, or 1–551), a Temporary Evidence of Lawful Admission for Permanent Residence form (INS Form 1–181B), or a valid passport and immigration visa.

(2) An alien in the category specified in § 1626.4(b) shall present the following documents:

(i) The fee receipt issued to the alien by the Immigration and Naturalization Service (INS) at the time that the Application for Status as Permanent Resident (INS Form 1–485) was filed; a copy of the Application for Status as Permanent Resident accompanied by a notarized statement signed by the alien that such form was filed with INS; a copy of the Application for Immigrant Visa & Alien Registration (Department of State Form FS–510) accompanied by a notarized statement signed by the alien that such form was filed with a consulate office; or a copy of the Application for Suspension of Deportation (INS Form 1–256A) accompanied by a notarized statement signed by the alien that such form was filed with INS; and

(ii) A copy of the alien's marriage certificate accompanied by proof of the spouse's U.S. citizenship; a copy of the United States birth certificate, baptismal certificate, adoption decree or other documents demonstrating that the alien is the parent of a United States citizen under the age of 21; a copy of the alien's birth certificate, baptismal certificate, adoption decree, or other documents demonstrating that the alien is a child under the age of 21, accompanied by proof that the alien's parent is a United States citizen; or in lieu of the above, a copy of the Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa (INS Form 1–130) containing information that demonstrates that the alien is related to such a United States citizen spouse, parent, or child, accompanied by a notarized statement that such form was filed with INS.

(3) An alien in the category specified in § 1626.4(c) shall present an Arrival-Departure Record (INS Form 1–94) marked ''section 207'' or ''Refugee'' (if claiming refugee status), ''section 208'' or ''Asylum'' (if claiming asylum status), or ''section 203(a)(7)'' or ''conditional entry'' (if claiming conditional entrant status).

(4) An alien in the category specified in § 1626.4(d) shall present an Arrival-Departure Record (INS Form 1–94) marked ''section 243(h),'' or a court order or letter signed by an immigration judge stating that the Attorney General is withholding deportation of the alien.

(5) A recipient may also accept any other authoritative document issued by INS that provides evidence of alien status for the categories of aliens listed in paragraph (b) of this section.

(c) A Temporary Resident Card (INS Form 1–688) shall be considered evidence of eligible alien status in the case of a Special Agricultural Worker. *See* § 1626.7(b). This form shall not be

considered evidence of eligible alien status in the case of an alien who has obtained an adjustment in status under the General Amnesty provisions of Immigration Reform and Control Act (IRCA), 8 U.S.C. 1255a, unless the alien can qualify independently under another exception to the general restriction as stated in §1624.4(a), (b), (c) or (d).

(d) A recipient shall upon request furnish each person seeking legal assistance with a list of the documents described in this section. Persons applying for legal assistance are responsible for producing the appropriate documents to verify eligibility.

(e) In an emergency, legal services may be provided prior to compliance with all the requirements of §1626.5(a) through (d) if:

(1) It is not feasible for a citizen or an alien to come to the recipient's office or otherwise physically transmit documentation to the recipient before commencement of representation, such required information as can be obtained orally shall be recorded by the recipient and written documentation shall be submitted as soon as possible;

(2) An alien is physically present, but cannot produce required documentation, he or she shall make a written statement identifying the category listed in §1626.4 under which he or she claims eligibility and the documents that will be produced to verify that status; this documentation shall be submitted as soon as possible;

(3) The recipient adheres strictly to the same criteria for emergency assistance used in their general determination of priorities and uses the procedures of §1626.5(e) only in cases meeting these criteria; and

(4) The recipient informs clients accepted under these procedures that only limited emergency legal assistance may be provided them without satisfactory documentation and that failure or inability to produce satisfactory documentation will compel the recipient to discontinue representation consistent with the recipient's professional responsibilities as soon as the emergency no longer exists.

(f) No written verification is required when the only service provided for an eligible alien or citizen is brief advice and consultation by telephone. The term ''brief advice'' is limited to advice provided by telephone and does not include a continuous representation of a client.

§1626.6 Change in circumstances.

If, to the knowledge of the recipient, a client who was an eligible alien becomes ineligible through a change in circumstances, a recipient must discontinue representation of the client consistent with the applicable rules of professional responsibility.

§1626.7 Special eligibility questions.

(a) The alien restriction in §1626.3 is not applicable to the following:

(1) Citizens of the following Pacific Island entities:

(i) Commonwealth of the Northern Marinas;

(ii) Republic of Palau;

(iii) Federated States of Micronesia;

(iv) Republic of the Marshall Islands;

(2) All Canadian-born American Indians at least 50% Indian by blood;

(3) Members of the Texas Band of Kickapoo.

(b) An alien who qualified as a special agricultural worker and whose status is adjusted to that of temporary resident alien under the provisions of IRCA is considered a permanent resident alien for all purposes except immigration under the provisions of section 302 of Pub. L. 99–603, 100 Stat. 3422, 8 U.S.C. 1160(g). Since the status of these aliens is that of permanent resident alien under section 1101(a)(20) of Title 8, these workers may be provided legal assistance. These workers are ineligible for legal assistance in order to obtain the adjustment of status of temporary resident under IRCA, but are eligible for legal assistance after the application for adjustment of status to that of temporary resident has been filed, as long as such application has not been rejected and the applicant is eligible for services under §1626.4(b).

§1626.8 H–2 Agricultural workers.

(a) Nonimmigrant agricultural workers admitted under the provisions of 8 U.S.C. 1101(a)(15)(h)(ii), commonly called H–2 workers, are considered to be aliens described in 8 U.S.C.

1101(a)(20) and thus, if otherwise eligible, may be provided legal assistance regarding the matters specified in section 305 of the Immigration Reform and Control Act of 1986, Pub. L. 99–603, Stat. 3434, 8 U.S.C. 1101 note.

(b) The following matters which arise under the provisions of the worker's specific employment contract may be the subject of legal assistance by an LSC-funded program:

(1) Wages;

(2) Housing;

(3) Transportation; and

(4) Other employment rights as provided in the worker's specific contract under which the nonimmigrant worker was admitted.

§ 1626.9 Replenishment agricultural workers.

Aliens who acquire the status of aliens lawfully admitted for temporary residence as replenishment agricultural workers under section 210A(c) of the Immigration and Nationality Act, such status not having changed, are considered to be aliens described in 8 U.S.C. 1101(a)(20) and thus may receive legal assistance, if otherwise eligible.

§ 1626.10 Recipient policies, procedures and recordkeeping.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

PART 1627—SUBGRANTS AND DUES

Sec.

AUTHORITY: Pub. L. 104–134, 110 Stat. 1321, 42 U.S.C. 2996e(b)(1), 2996f(a), and 2996g(e).

SOURCE: 48 FR 54209, Nov. 30, 1983, unless otherwise noted.

§ 1627.1 Purpose.

In order to promote accountability for Corporation funds and the observance of the provisions of the Legal Services Corporation Act and the Corporation's regulations adopted pursuant thereto, it is necessary to set out the rules under which Corporation funds may be transferred by recipients to other organizations (including other recipients).

§ 1627.2 Definitions.

(a) *Recipient* as used in this part means any recipient as defined in section 1002(6) of the Act *and* any grantee or contractor receiving funds from the Corporation under section 1006(a)(1)(B) or 1006(a)(3) of the Act.

(b)(1) *Subrecipient* shall mean any entity that accepts Corporation funds from a recipient under a grant contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient's programmatic activities. Such activities would normally include those that might otherwise be expected to be conducted directly by the recipient itself, such as representation of eligible clients, or which provide direct support to a recipient's legal assistance activities or such activities as client involvement, training or state support activities. Such activities would not normally include those that are covered by a fee-for-service arrangement, such as those provided by a private law firm or attorney representing a recipient's clients on a contract or judicare basis, except that any such arrangement involving more than $25,000 shall be included. Subrecipient activities would normally also not include the provision of goods or services by vendors or consultants in the normal course of business if such goods or services would not be expected to be provided directly by the recipient itself, such as auditing or business machine purchase and/or maintenance. A single entity could be a subrecipient with respect to some activities it conducts for a recipient while not being a subrecipient with respect to other activities it conducts for a recipient.

(2) *Subgrant* shall mean any transfer of Corporation funds from a recipient

which qualifies the organization receiving such funds as a subrecipient under the definition set forth in paragraph (b)(1) of this section.

(c) *Dues* as used in this part means payments to an organization on behalf of a program or individual to be a member thereof, or to acquire voting or participatory rights therein.

[48 FR 54209, Nov. 30, 1983, as amended at 61 FR 45754, Aug. 29, 1996]

§1627.3 Requirements for all subgrants.

(a)(1) All subgrants must be submitted in writing to the Corporation for prior, written approval. The submission shall include the terms and conditions of the subgrant and the amount of funds intended to be transferred.

(2) The Corporation shall have 45 days to approve, disapprove, or suggest modifications to the subgrant. A subgrant which is disapproved or to which modifications are suggested may be resubmitted for approval. Should the Corporation fail to take action within 45 days, the recipient shall notify the Corporation of this failure and, unless the Corporation responds within 7 days of the receipt of such notification, the subgrant shall be deemed to have been approved.

(3) Any subgrant not approved according to the procedures of paragraph (a)(2) of this section shall be subject to audit disallowance and recovery of all the funds expended pursuant thereto.

(4) Any subgrant which is a continuation of a previous subgrant and which expires before March 1, 1984 may be extended until March 1, 1984, if a new subgrant agreement is submitted for approval to the Corporation by January 15, 1984. In the event the Corporation refuses to allow the renewal of any such submitted agreement, the recipient shall be permitted to allow the subrecipient 60 days' funding to close out the subgrant activities.

(b)(1) A subgrant may not be for a period longer than one year, and all funds remaining at the end of the grant period shall be considered part of the recipient's fund balance.

(2) All subgrants shall contain a provision providing for their orderly termination in the event that the recipient's funding is terminated or the recipient is not refunded and for suspension of activities if the recipient's funding is suspended.

(3) A substantial change in the work program of a subgrant or an increase or decrease in funding of more than 10% shall require Corporation approval pursuant to the provisions of section 1627.3(a). Minor changes of work program or changes in funding of less than 10% shall not require prior Corporation approval, but the Corporation shall be informed in writing thereof.

(c) Recipients shall be responsible for ensuring that subrecipients comply with the financial and audit provisions of the Corporation. The recipient is responsible for ensuring the proper expenditure, accounting for, and audit of delegated funds. Any funds delegated by a recipient to a subrecipient shall be subject to the audit and financial requirements of the Audit and Accounting Guide for Recipients and Auditors. The delegated funds may be separately disclosed and accounted for, and reported upon in the audited financial statements of a recipient; or such funds may be included in a separate audit report of the subrecipient. The relationship between the recipient and subrecipient will determine the proper method of financial reporting in accordance with generally accepted accounting principles. A subgrant agreement may provide for alternative means of assuring the propriety of subrecipient expenditures, especially in instances where a large organization receives a small subgrant. If such an alternate means is approved by the Audit Division of the Corporation, the information provided thereby shall satisfy the recipient's annual audit requirement with regard to the subgrant funds.

(d) The recipient shall be responsible for repaying the Corporation for any disallowed expenditures by a subrecipient, irrespective of whether the recipient is able to recover such expenditures from the subrecipient.

(e) To assure subrecipient compliance with the Act, Congressional restrictions having the force of law, Corporation Regulations (45 CFR chapter XVI), and Corporation Guidelines or Instructions, contracts between a recipient and a subrecipient shall provide for the

same oversight rights for the Corporation with respect to subrecipients as apply to recipients.

[48 FR 54209, Nov. 30, 1983, as amended at 49 FR 1703, Jan. 13, 1984]

§ 1627.4 Dues.

(a) Corporation funds may not be used to pay dues to any private or nonprofit organization, whether on behalf of a recipient or an individual.

(b) Paragraph (a) of this section does not apply to the payment of dues mandated as a requirement of practice by a governmental organization or to the payment of dues from non-LSC funds.

[61 FR 45754, Aug. 29, 1996]

§ 1627.5 Contributions.

Any contributions or gifts of Corporation funds to another organization or to an individual are prohibited.

§ 1627.6 Transfers to other recipients.

(a) The requirements of § 1627.3 shall apply to all subgrants by one recipient to another recipient.

(b) The subrecipient shall audit any funds subgranted to it in its annual audit and supply a copy of this audit to the recipient. The recipient shall either submit the relevant part of this audit with its next annual audit or, if an audit has been recently submitted, submit it as an addendum to that recently submitted audit.

(c) In addition to the provisions of § 1627.3(d), the Corporation may hold the subrecipient directly responsible for any disallowed expenditures of subgrant funds. Thus, the Corporation may recover all of the disallowed costs from either recipient or subrecipient or may divide the recovery between the two; the Corporation's total recovery may not exceed the amount of expenditures disallowed.

(d) Funds received by a recipient from other recipients in the form of fees and dues shall be accounted for and included in the annual audit of the recipient receiving these funds as Corporation funds.

§ 1627.7 Tax sheltered annuities, retirement accounts and pensions.

No provision contained in this part shall be construed to affect any payment by a recipient on behalf of its employees for the purpose of contributing to or funding a tax sheltered annuity, retirement account, or pension fund.

[61 FR 45754, Aug. 29, 1996]

§ 1627.8 Recipient policies, procedures and recordkeeping.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

[61 FR 45754, Aug. 29, 1996]

PART 1628—RECIPIENT FUND BALANCES

Sec.
1628.1 Purpose.
1628.2 Definitions.
1628.3 Policy.
1628.4 Procedure.
1628.5 Fund balance deficits.

AUTHORITY: Secs. 1006(b)(1)(A), 1007(a)(3); 42 U.S.C. 2996e(b)(1)(A), 42 U.S.C. 2996f(a)(3).

SOURCE: 49 FR 21332, May 21, 1984, unless otherwise noted.

§ 1628.1 Purpose.

(a) This part is designed to ensure the timely allocation of Legal Services Corporation (LSC) funds for the effective and economical provision of high quality legal assistance to eligible clients. To that end, recipients will be permitted to maintain and re-program from year to year fund balances of no more than 10% of their annualized LSC support.

(b) A waiver of this policy up to a maximum of 25% of the recipient's annualized grant amount may be obtained under certain conditions as described in § 1628.3(d). Funds carried over in excess of 10% or above the level permitted by a specific waiver will be recovered as set forth in section 1628.3(a).

§ 1628.2 Definitions.

(a) LSC *support* for the reporting period shall be defined as the sum of: (1) The annualized LSC grant award(s);

(2) Any additional income derived from an LSC grant (interest, rents, etc.); and

(3) That proportion of any reimbursement or recovery of direct payment to attorneys, proceeds from the sale of assets, or other compensation or income attributable to any Corporation grant.

(b) The LSC *fund balance amount* shall be determined solely by reference to the recipient's annual audit. (The fund balance reported in the recipient's annual audit is subject to review and approval by the Corporation's Audit Division. Noncompliance with provisions of the Corporation's *Audit and Accounting Guide for Recipients and Auditors* may result in an increase or decrease in the fund balance as reported in the audit.)

(c) The *fund balance percentage* shall be determined by expressing the fund balance amount as a percentage of the recipient's LSC support for the reporting period.

(d) *Recipient* as used in this part, means any recipient as defined in section 1002(6) of the LSC Act and any grantee or contractor receiving funds from the Corporation under section 1006(a)(1) or 1006(a)(3) of the Act.

§1628.3 Policy.

(a) In the absence of a waiver from the Director, Office of Field Services, any fund balance amount in excess of 10% of LSC support shall be repaid to the Corporation in a lump sum or by pro rata deductions from the recipient's grant checks for a specific number of months. The Office of Field Services shall determine which of the specified methods of repayment is reasonable and appropriate in each case after consultation with the recipient.

(b) After the Corporation's receipt and review of the recipient's annual audit, the Corporation shall provide written notice to the recipient of the fund balance amount due and payable to the Corporation as well as the method for repayment 30 days prior to the effective date for repayment either to occur or to commence in accordance with §1628.3(a).

(c) In no way shall any such reduction and/or deduction in LSC support be construed to affect permanently the annualized funding level of the recipient, nor shall any such reduction and/or deduction in LSC support be considered to be a termination or denial of refunding under 45 CFR 1606 and 1625 respectively.

(d) A waiver of the 10% ceiling may be granted at the discretion of the Corporation in extraordinary circumstances; such a waiver may be granted by the Corporation to extend the ceiling for fund balance amounts established under this regulation to a maximum of 25% of LSC support. Further, in addition to the established 10% ceiling, the Corporation shall grant a waiver up to 25% of direct payment to attorneys in the last audit to recipients who operate compensated private bar programs or components to be utilized exclusively to fund a cash reserve or encumbrance system for direct payment to attorneys. Such recipients must submit a timely written request to the Office of Field Services to obtain this waiver. However, under no circumstances will a recipient be allowed to retain a fund balance in excess of 25% of support.

(e) All one-time or special purpose grants awarded by the Corporation shall have an effective date and termination date. Such grants are not subject to this fund balance policy. Revenue and expenses relating to such grants must be reflected separately in the audit report submitted to the Corporation. This may be done by establishing a separate fund or by providing a separate supplemental schedule of revenue and expenses related to such grants as a part of the audit report. No funds provided under a one-time or special purpose grant may be expended subsequent to the termination date of the grant without the prior written approval of the Corporation. All unexpended funds under such grants shall be returned to the Corporation.

§1628.4 Procedure.

(a) Any recipient whose audited fund balance exceeds the ceiling set forth in §1628.1 shall submit to the Director, Office of Field Services, within 120 days after the close of the recipient's fiscal year, a statement of the fund balance which occurred according to the annual audit required by section 1009(c)(1) of the Legal Services Corporation Act, as amended. The funds will be recovered as set forth in §1628.3, unless excluded by a specific waiver.

(b) The recipient may, within 120 days after the close of its fiscal year, apply to the Director, Office of Field Services for a waiver of the 10% ceiling. Such application must specify:

(1) The fund balance amount according to the recipient's annual audit;

(2) The reason such fund balance has been attained;

(3) The recipient's plan for the disposition or reserve of such fund balance amount within the current grant period;

(4) The amount of fund balance projected to be carried forward at the close of the recipient's then current fiscal year; and,

(5) The extraordinary circumstances justifying the retention of the fund balance which include windfall receipts for which a recipient cannot reasonably plan, such as proceeds from the sale of property, receipt of direct payment to attorneys, and collection of insurance proceeds.

(c) Excess fund balance amounts shall not be expended by the recipient prior to approval of the waiver application by the Corporation.

(d) The decision of the Corporation regarding the granting of a waiver (other than the automatically granted waiver for a cash reserve for compensated bar programs) shall be guided by the statutory mandate requiring the recipient to provide high quality legal services in an effective and economical manner. In addition, the Corporation shall give special consideration to the following factors in reviewing a waiver request submitted pursuant to this regulation:

(1) Emergencies, unusual occurrences, or other extraordinary circumstances giving rise to the existence of a fund balance in excess of 10%, and the special needs of clients;

(2) The need for a recipient which operates a compensated bar program or component to maintain a cash reserve; and

(3) The recipient's financial management record.

(e) Excess fund balance amounts approved for expenditure must be separately reported in the current fiscal year audit. This may be done by establishing a separate fund or by providing a separate supplemental schedule as part of the audit report.

[49 FR 23056, June 4, 1984]

§ 1628.5 Fund balance deficits.

(a) Sound financial management practices such as those established in LSC's ''Fundamental Criteria of an Accounting and Financial Reporting System,'' should preclude deficit spending. Use of current year LSC grant funds to liquidate deficit balances in the LSC fund from a preceding period(s) requires the prior written approval of the Corporation.

(b) The recipient may, within 120 days of the close of its fiscal year, apply to the Corporation for approval of the costs associated with the liquidation of the deficit balances in the LSC fund.

(c) In the absence of approval by the Corporation, expenditures of current year LSC grant funds to liquidate a deficit from a prior year shall be identified as questioned costs.

(d) The recipient's request must specify the same information relative to the deficit LSC fund balance as that set forth in sections 1628.4(b) (1), (2), (3), and (4). Additionally, the recipient must develop and submit a plan approved by its governing body describing the measures which will be implemented to prevent a recurrence of a deficit balance in the LSC fund. The Corporation reserves the right to require changes in the submitted plan.

(e) The decision of the Corporation regarding acceptance of these deficit-related costs shall be guided by the statutory mandate requiring the recipient to provide high quality legal services performed in an effective and economical manner. Special consideration will be given for emergencies, unusual occurrences, or other extraordinary circumstances giving rise to this situation.

PART 1629—BONDING OF RECIPIENTS

Sec.

AUTHORITY: Secs. 1006(b)(1)(A) and 1007(a)(3), Pub. L. 93–355, as amended, Pub. L. 95–222 (42 U.S.C. 2996e(1)(A) and 2996f(3)).

SOURCE: 49 FR 28717, July 16, 1984, unless otherwise noted.

§1629.1 General.

(a) If any program which receives Corporation funds is not a government, or an agency or instrumentality thereof, such program shall carry fidelity bond coverage at a minimum level of at least ten (10) percent of the program's annualized LSC funding level for the previous fiscal year, or of the initial grant or contract, if the program is a new grantee or contractor. No coverage carried pursuant to this part shall be at a level less than $50,000.

(b) A fidelity bond is a bond indemnifying such program against losses resulting from the fraud or lack of integrity, honesty or fidelity of one or more employees, officers, agents, directors or other persons holding a position of trust with the program.

§1629.2 Persons required to be bonded.

(a) Every director, officer, employee and agent of a program who handles funds or property of the program shall be bonded as provided in this part.

(b) Such bond shall provide protection to the program against loss by reason of acts of fraud or dishonesty on the part of such director, officer, employee or agent directly or through connivance with others.

§1629.3 Criteria for determining handling.

(a) The term ''handles'' shall be deemed to encompass any relationship of a director, officer, employee or agent with respect to funds or other property which can give rise to a risk of loss through fraud or dishonesty. This shall include relationships such as those which involve access to funds or other property or decision-making powers with respect to funds or property which can give rise to such risk of loss.

(b) Subject to the application of the basic standard of risk of loss to each situation, the criteria for determining whether there is ''handling'' so as to require bonding are:

(1) Physical contact with cash, checks or similar property;

(2) The power to secure physical possession of cash, checks or similar property such as through access to a safe deposit box or similar depository, access to cash or negotiable instruments and assets, power of custody or safekeeping, or the power to borrow or withdraw funds from a bank or other account whether or not physical contact actually takes place;

(3) The power to transfer or cause to be transferred property such as mortgages, title to land and buildings, or securities, through actual or apparent authority, to oneself or to a third party, or to be negotiated for value.

(c) Persons who actually disburse funds or other property, such as officers authorized to sign checks or other negotiable instruments, or persons who make cash disbursements, shall be considered to be ''handling'' such funds or property.

(d) In connection with disbursements, any persons with the power to sign or endorse checks or similar instruments or otherwise render them transferable, whether individually or as cosigners with one or more persons, shall each be considered to be ''handling'' such funds or other property.

(e) To the extent a person's supervisory or decision-making responsibility involves factors in relationship to funds discussed in paragraphs (b) (1), (2), (3), or paragraphs (c) and (d) of this section, such persons shall be considered to be ''handling'' in the same manner as any person to whom the criteria of those subparagraphs apply.

§1629.4 Meaning of fraud or dishonesty.

The term ''fraud or dishonesty'' shall be deemed to encompass all those risks of loss that might arise through dishonest or fraudulent acts in the handling of funds as delineated in §1629.3. As such, the bond must provide recovery for loss occasioned by such acts even though no personal gain accrues to the person committing the act and the act is not subject to punishment as a crime or misdemeanor, provided that within the law of the state in which

the act is committed, a court could afford recovery under a bond providing protection against fraud or dishonesty. As applied under state laws, the term ''fraud or dishonesty'' encompasses such matters as larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wrongful conversion, willful misapplication or any other fraudulent or dishonest acts.

§ 1629.5 Form of bonds.

Any form of bond which may be described as individual, schedule or blanket, or any combination of such forms of bonds, shall be acceptable to meet the requirements of this part. The basic types of bonds in general usage are:

(a) An individual bond which covers a named individual in a stated penalty;

(b) A name schedule bond which covers a number of named individuals in the respective amounts set opposite their names;

(c) A position schedule bond which covers all of the occupants of positions listed in the schedule in the respective amounts set opposite such positions;

(d) A blanket bond which covers all the insured's directors, officers, employees and agents with no schedule or list of those covered being necessary and with all new directors, officers, employees and agents bonded automatically, in a blanket penalty.

§ 1629.6 Effective date.

(a) Each program shall certify in its Application for Refunding, beginning with the application for FY 1985 funds, that it has obtained a bond or bonds which satisfy the requirements of this part.

(b) A copy of such bond or bonds shall be provided to the Corporation at its request.

PART 1630—COSTS STANDARDS AND PROCEDURES

Sec.

AUTHORITY: 42 U.S.C. 2996e, 2996f, 2996g, 2996h(c)(1), and 2996i(c).

SOURCE: 51 FR 29081, Aug. 13, 1986, unless otherwise noted.

§ 1630.1 Purpose.

This part is intended to provide uniform standards for allowability of costs and to provide a comprehensive, fair, timely, and flexible process for the resolution of questioned costs incurred by recipients of the Corporation. The Corporation has considered the standardized policies developed over years of federal experience with assistance to nonprofit organizations, and has adopted, or adapted, many of these policies where appropriate for the funding of legal services for eligible clients.

§ 1630.2 Definitions.

(a) A *questioned cost* is a charge or proposed charge to a recipient's Corporation funds which could be determined to be ineligible.

(b) An *allowed cost* is a cost that, after investigation, the Corporation has determined to be eligible for payment from a recipient's Corporation funds.

(c) A *disallowed cost* is a cost which has been determined to be ineligible for payment from a recipient's Corporation funds and includes any income the recipient may have derived from activities supported by that cost, including proceeds from the sale of assets and interest.

(d) *Recipient* as used in this part means any grantee or contractor receiving funds from the Corporation under sections 1006(a)(1) or 1006(a)(3) of the Act.

§ 1630.3 Burden of proof.

(a) The recipient shall at all times have the burden of proof under this Part.

(b) If a recipient defends a questioned cost on the basis that the funds used were not subject to the restriction cited by the Corporation, the recipient

has the burden of proving that the funds actually expended were not in fact subject to that restriction.

§ 1630.4 Standards governing allowability of costs under Corporation grants or contracts.

(a) *General criteria.* Expenditures by a recipient are allowable under the recipient's grant or contract only if the recipient can demonstrate that the cost was:

(1) Actually incurred during the effective term of the grant or contract (unless allowed by part 1628) and the recipient was liable for payment;

(2) Reasonable and necessary for the provision of legal services for eligible clients or for the accomplishment of another function specified in the grant or contract application as approved by the Corporation;

(3) Allocable to such function(s);

(4) In compliance with the Act, applicable appropriation acts, Corporation rules, regulations, guidelines, and instructions, the Corporation Audit and Accounting Guide for Recipients and Auditors, and the terms and conditions of the grant or contract;

(5) Consistent with policies and procedures that apply uniformly to both Corporation-financed and other activities of the recipient;

(6) Accorded consistent treatment;

(7) Determined in accordance with generally accepted accounting principles;

(8) Not included as a cost or used to meet cost sharing or matching requirements of any other federally financed program, unless the agency whose funds are being matched determines in writing that Corporation funds may be used for federal matching purposes; and

(9) Adequately and contemporaneously documented and the Corporation was given access during normal business hours to the documentation as filed in the recipient's normal business records.

(b) *Reasonable costs.* A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. If a cost is disallowed solely on the ground that it is excessive, only the amount that is larger than reasonable shall be disallowed. The question of the reasonableness of specific costs must be scrutinized with particular care in connection with recipients, or separate divisions thereof, which receive the preponderance of their support from grants or contracts with the Corporation or federal agencies, rather than through the sale of goods and services in free markets. In determining the reasonableness of a given cost, consideration shall be given to:

(1) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the recipient or the performance of the grant or contract;

(2) The restraints or requirements imposed by such factors as generally accepted sound business practices, arms-length bargaining, federal and state laws and regulations, and the terms and conditions of the grant or contract;

(3) Whether the individuals concerned acted with prudence under the circumstances, considering their responsibilities to the recipient, its clients and employees, the public at large, the Corporation, and the federal government; and

(4) Significant deviations from the established practices of the recipient which may unjustifiably increase the grant or contract costs.

(c) *Allocable costs.* (1) A cost is allocable to a particular cost objective, such as a grant, project, service, or other activity, in accordance with the relative benefits received. A cost is allocable to a Corporation grant or contract if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it:

(i) Is incurred specifically for the grant or contract;

(ii) Benefits both the grant or contract and other work and can be distributed in reasonable proportion to the benefits received; or

(iii) Is necessary to the overall operation of the recipient, although a direct relationship to any particular cost objective cannot be shown.

(2) Any cost allocable to a particular grant or contract or other cost objective under these principles may not be shifted to other Corporation grants or

contracts to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms or conditions of the grant or contract.

(d) *Applicable credits.* (1) A recipient must deduct all applicable credits, as defined in paragraph (d)(2) of this section, from the costs it charges to a grant or contract from the Corporation.

(2) The term ''applicable credits'' refers to those receipts or reductions of expenditures which operate to offset or reduce expense items that are allocable to grants or contracts as direct or indirect costs. Typical examples of such transactions are purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the recipient relate to allowable costs they shall be credited to the grant or contract either as a cost reduction or cash refund, as appropriate.

(e) *Program income.* Program income represents gross income earned by the recipient from Corporation-supported activities, and includes, but is not limited to, income from service fees (including attorneys' fees and costs), sales of commodities and property, and interest earned on grant or contract advances or other funds.

(f) *Advance understandings.* (1) Under any given grant or contract the reasonableness and allocability of certain items of costs may be difficult to determine. This is particularly true in connection with recipients that receive a preponderance of their support from the Corporation. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, it is often desirable to seek a written agreement with the Office of Monitoring, Audit, and Compliance in advance of incurring special or unusual costs. The absence of an advance agreement on any element of cost will not, in itself, affect the reasonableness or allocability of that element. Acceptance of the annual budget as part of the renewal of funding does not constitute an ''advance understanding'' or ''approval'', unless the cost or expenditure is identified and specifications of the purpose, amount, and all other information necessary to evaluate the necessity and reasonableness of the cost are included and explicit approval of the specific transaction is included with approval of the grant application.

(2) Because there is significant potential for disagreement regarding the reasonableness, necessity, or allowability of costs allocable to the following activities, recipients are encouraged to seek advance understandings regarding—

(i) Conduct of or attendance at meetings (attended primarily by employees of other LSC recipients or a purpose of which is to encourage political activity), conferences, symposia, or training projects by participants, trainees, trainers, or employees;

(ii) Maintenance or occupancy of a branch office if a primary use of that office is to support legislative advocacy, formal rulemaking, or lobbying.

(g) *Guidance.* The Circulars of the Office of Management and Budget shall provide guidance for all allowable cost questions arising under this part when relevant policies or criteria therein are not inconsistent with the provisions of the Act, applicable appropriations acts, this part, the Audit and Accounting Guide for Recipients and Auditors, and Corporation rules, regulations, guidelines, and instructions.

§ 1630.5 Costs specifically unallowable under Corporation grants and contracts.

(a) No cost allocable to an activity that violates the Act, other provisions of law, Corporation rules, regulations, guidelines, instructions, or the terms of a recipient's grant or contract agreement may be charged to Corporation funds.

(b) Without prior approval of the Corporation (which approval shall not be withheld unless the Corporation determines that the cost would be inconsistent with the standards and policies of this part and which shall be valid for no more than one year), no cost allocable to any of the following may be charged to Corporation funds:

(1) The cost of a lease or purchase of equipment, furniture, books or similar personal property if the single item or combined purchase price is in excess of

$10,000. In the case of a lease, the purchase price is determined by the prevailing market rate for purchase of the property leased, not by the lease price. ''Combined purchase price'' means the total cost of all the components of a system, such as a computer or telephone system, in which the components are planned as integral parts of the system or lease process. The addition of books to an existing library purchased during a prior audit year, of new printers to an existing computer system purchased during a prior audit year, or of new furniture to office furniture purchased during a prior audit year would not require prior approval unless the additions had a combined purchase price in excess of $10,000. When purchases or leases are made for more than one office, the ''combined purchase price'' includes the cost of all new system components for all offices affected;

(2) Purchases of real property;

(3) Consultant contracts in excess of $5,000 or consultant fees in excess of $261 per eight-hour day or $35 per hour except that

(i) The retention of expert witnesses or other consultants or attorneys secured on behalf of eligible clients shall not be considered consultant services, and

(ii) Audit services shall not be considered as consultant services, but other services that may be provided by a recipient's auditor, such as the preparation of interim financial reports or tax reports, shall be considered consultant services and shall require approval if the fees exceed the limits established by this subparagraph.

§ 1630.6 Effect of absence of prior approval.

The Corporation may not assert the absence of its approval as a basis for disallowance of a cost if it has not provided written notice to a recipient that it objects to a proposed cost expenditure involving Corporation funds, or to a proposed action that could result in a cost expenditure that the recipient will charge to Corporation funds, within sixty (60) days of receipt by the Office of Monitoring, Audit, and Compliance of a request for such approval, or within thirty (30) days of the receipt by that Office of all requested information about the proposal. The Corporation must make written request for additional information within forty five (45) days of the receipt by the Office of Monitoring, Audit, and Compliance of the request for approval. This section does not apply to requests for approval made prior to the effective date of this regulation. If the request for prior approval is denied, the Corporation will provide the recipient with an explanation and statement of the grounds for denial.

§ 1630.7 Review and appeal process.

(a) When it questions a cost incurred by a recipient, the Corporation shall give written notice to the recipient and the Chairperson of its governing body stating the dollar amount of the cost and the factual and legal basis for questioning it. Such notice must be provided no more than six (6) years after the recipient incurred the cost or expended the funds.

(b) The recipient may respond with written evidence and argument to show that the cost was allowable, that the Corporation, for equitable, practical, or other reasons, should not recover all, or part of the amount, or that the recovery should be made in installments. If the recipient fails to respond within thirty (30) days of its receipt of notice, the cost shall be disallowed.

(c) Within forty-five (45) days of receiving the recipient's written response to the notice of questioned cost, the Corporation shall issue a determination that the cost has been allowed or disallowed and advise the recipient of the method and schedule for collection of any disallowed costs.

(d) Within thirty (30) days after it receives a determination from the Corporation that a questioned cost has been disallowed, a recipient may send a written request for review to the President of the Corporation, stating its reasons in detail.

(e) Within thirty (30) days after receipt of the written request for review, the President shall either adopt, modify, or reverse the determination. The decision shall be based on the written record, consisting of the notice, the recipient's response, the Corporation's determination, the recipient's request

for review, and any response and analysis sent to the President by Corporate staff. The decision of the President, or his or her designee, shall become final upon receipt by the recipient of written notice of the decision. The Corporation shall send a copy of the staff's response and analysis to the recipient at the time it sends the President's decision.

(f) If the President has had prior involvement in the consideration of the issue, another executive employee who has had no prior involvement shall be designated to hear and decide the request for review.

§ 1630.8 Recovery of disallowed costs.

After completion of all action under § 1630.7, the Corporation shall recover, in the form of a reduction in future grant checks or direct payment or otherwise, an amount not to exceed the total disallowed cost and any additional income derived from activities supported or assets purchased by means of the disallowed cost.

§ 1630.9 Other remedies; effect on other parts.

(a) In all cases in which a cost has been disallowed by the Corporation, the Corporation shall require that the recipient take the action needed to prevent recurrence of the activity that gave rise to such disallowed cost. In cases of serious financial mismanagement, fraud, or defalcation of funds, the Corporation may take appropriate action pursuant to parts 1606, 1623, and 1625 of its regulations and shall make such referrals and recommendations as the circumstances warrant.

(b) Recovery of questioned costs by any means under this part is not to be construed to affect permanently the annualized funding level of the recipient, or to constitute a termination of financial assistance under part 1606, a suspension of funding under part 1623, or a denial of refunding under part 1625.

§ 1630.10 Responsibility of subgrantees and subcontractors.

When disallowed costs arise from expenditures incurred under a subgrant or subcontract of Corporation funds, the recipient and the subrecipient or subcontractor will be held jointly and severally responsible for the actions of the subrecipient or subcontractor, as provided in 45 CFR part 1627, and will be subject to all remedies available under this part.

§ 1630.11 Time.

(a) *Computation.* Time limits specified in this Part shall be computed in accordance with Rules 6(a) and 6(e) of the Federal Rules of Civil Procedure.

(b) *Enlargement.* The President of the Corporation may, on written request for good cause shown, grant an enlargement of time and shall so notify the recipient in writing.

§ 1630.12 Non-public funds.

(a) No cost allocable to an activity that violates section 1010(c) of the Act or part 1610 of these regulations may be charged to non-public funds.

(b) The Corporation shall, pursuant to this part, collect from the recipient's Corporation funds an amount not to exceed the amount of non-public funds allocated to such violation and any additional income derived therefrom.

PART 1631—EXPENDITURE OF GRANT FUNDS

Sec.
1631.1 Policy.
1631.2 Application and waiver.

AUTHORITY: 42 U.S.C. 2996e(b)(1)(A), 2996f(a)(3); Pub. L. 99–190, 99 Stat. 1185; Pub. L. 99–180, 99 Stat. 1136.

SOURCE: 51 FR 24827, July 9, 1986, unless otherwise noted.

§ 1631.1 Policy.

No Legal Services Corporation funds, including income derived therefrom and those LSC funds held by organizations which control, are controlled by, or are subject to common control with, a recipient or subrecipient, a group of recipients and/or subrecipients, or agents or employees of such organizations shall be expended, unless such funds are expended in accordance with all of the restrictions and provisions of Pub. L. 99–180 of December 13, 1985, except that such funds may be expended for the continued representation of aliens prohibited by said Public Law where such representation commenced

prior to January 1, 1983, or as approved by the Corporation.

§1631.2 Application and waiver.

(a) The Corporation may grant a waiver of the restrictions contained in this part to enable a program to complete representation in cases which commenced prior to January 1, 1986.

(b) Programs seeking a waiver pursuant to paragraph (a) of this section must submit documentation to the Corporation detailing their efforts to dispose of such cases in accordance with the procedures required in §1626.6(a) (1), (2) and (3), and receive Corporation approval to expend funds for completion of the affected cases.

PART 1632—REDISTRICTING

Sec.
1632.1 Purpose.
1632.2 Definitions.
1632.3 Prohibition.
1632.4 Recipient policies.

AUTHORITY: 42 U.S.C. 2996e(b)(1)(A); 2996f(a)(2)(C); 2996f(a)(3); 2996(g)(e); 110 Stat. 1321(1996).

SOURCE: 61 FR 41965, Aug. 13, 1996, unless otherwise noted.

§1632.1 Purpose.

This part is intended to ensure that recipients do not engage in redistricting activities.

§1632.2 Definitions.

(a) *Advocating or opposing any plan* means any effort, whether by request or otherwise, even if of a neutral nature, to revise a legislative, judicial, or elective district at any level of government.

(b) *Recipient* means any grantee or contractor receiving funds made available by the Corporation under section 1006(a)(1) or 1006(a)(3) of the LSC Act. For the purposes of this part, ''recipient'' includes subrecipient and employees of recipients and subrecipients.

(c) *Redistricting* means any effort, directly or indirectly, that is intended to or would have the effect of altering, revising, or reapportioning a legislative, judicial, or elective district at any level of government, including influencing the timing or manner of the taking of a census.

§1632.3 Prohibition.

(a) Neither the Corporation nor any recipient shall make available any funds, personnel, or equipment for use in advocating or opposing any plan or proposal, or represent any party or participate in any other way in litigation, related to redistricting.

(b) This part does not prohibit any litigation brought by a recipient under the Voting Rights Act of 1965, as amended, 42 U.S.C. 1971 *et seq.*, provided such litigation does not involve redistricting.

§1632.4 Recipient policies.

Each recipient shall adopt written policies to implement the requirements of this part.

PART 1633—RESTRICTION ON REPRESENTATION IN CERTAIN EVICTION PROCEEDINGS

Sec.
1633.1 Purpose.
1633.2 Definitions.
1633.3 Prohibition.
1633.4 Recipient policies, procedures and recordkeeping.

AUTHORITY: 42 U.S.C.§§2996e(a), 2996e(b)(1)(A), 2996f(a)(2)(C), 2996f(a)(3), 2996g(e); 110 Stat. 1321 (1996).

SOURCE: 61 FR 41966, Aug. 13, 1996, unless otherwise noted.

§1633.1 Purpose.

This part is designed to ensure that in certain public housing eviction proceedings recipients refrain from defending persons charged with or convicted of illegal drug activities.

§1633.2 Definitions.

(a) *Controlled substance* has the meaning given that term in §102 of the Controlled Substances Act (21 U.S.C. 802);

(b) *Public housing project* and *public housing agency* have the meanings given those terms in §3 of the United States Housing Act of 1937 (42 U.S.C. 1437a);

(c) A person has been *charged with* engaging in illegal drug activities if a

criminal proceeding has been instituted against such person by a governmental entity with authority to initiate such proceeding and such proceeding is pending.

§ 1633.3 Prohibition.

Recipients are prohibited from defending any person in a proceeding to evict that person from a public housing project if:

(a) The person has been charged with or, within one year prior to the date when services are requested from a recipient, has been convicted of the illegal sale or distribution of a controlled substance; and

(b) The eviction proceeding is brought by a public housing agency on the basis that the illegal drug activity for which the person has been charged or for which the person has been convicted did or does now threaten the health or safety of other tenants residing in the public housing project or employees of the public housing agency.

§ 1633.4 Recipient policies, procedures and recordkeeping.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

PART 1634—COMPETITIVE BIDDING FOR GRANTS AND CONTRACTS

Sec.

AUTHORITY: 42 U.S.C. 2996e(a)(1)(A); 2996f(a)(3).

SOURCE: 61 FR 14258, Apr. 1, 1996, unless otherwise noted.

§ 1634.1 Purpose.

This part is designed to improve the delivery of legal assistance to eligible clients through the use of a competitive system to award grants and contracts for the delivery of legal services. The purposes of such a competitive system are to:

(a) Encourage the effective and economical delivery of high quality legal services to eligible clients that is consistent with the Corporation's Performance Criteria and the American Bar Association's Standards for Providers of Civil Legal Services to the Poor through an integrated system of legal services providers;

(b) Provide opportunities for qualified attorneys and entities to compete for grants and contracts to deliver high quality legal services to eligible clients;

(c) Encourage ongoing improvement of performance by recipients in providing high quality legal services to eligible clients;

(d) Preserve local control over resource allocation and program priorities; and

(e) Minimize disruptions in the delivery of legal services to eligible clients within a service area during a transition to a new provider.

§ 1634.2 Definitions.

(a) *Qualified applicants* are those persons, groups or entities described in section 1634.5(a) of this part who are eligible to submit notices of intent to compete and applications to participate in a competitive bidding process as described in this part.

(b) *Review panel* means a group of individuals who are not Corporation staff but who are engaged by the Corporation to review applications and make recommendations regarding awards of grants or contracts for the delivery of legal assistance to eligible clients. A majority of review panel members shall be lawyers who are supportive of the purposes of the LSC Act and experienced in and knowledgeable about the delivery of legal assistance to low-income persons, and eligible clients or representatives of low-income community groups. The remaining members of the review panel shall be persons who are supportive of the purposes of the

LSC Act and have an interest in and knowledge of the delivery of quality legal services to the poor. No person may serve on a review panel for an applicant with whom the person has a financial interest or ethical conflict; nor may the person have been a board member of or employed by that applicant in the past five years.

(c) *Service area* is the area defined by the Corporation to be served by grants or contracts to be awarded on the basis of a competitive bidding process. A service area is defined geographically and may consist of all or part of the area served by a current recipient, or it may include an area larger than the area served by a current recipient.

(d) *Subpopulation of eligible clients* includes Native Americans and migrant farm workers and may include other groups of eligible clients that, because they have special legal problems or face special difficulties of access to legal services, might better be addressed by a separate delivery system to serve that client group effectively.

§ 1634.3 Competition for grants and contracts.

(a) After the effective date of this part, all grants and contracts for legal assistance awarded by the Corporation under Section 1006(a)(1)(A) of the LSC Act shall be subject to the competitive bidding process described in this part. No grant or contract for the delivery of legal assistance shall be awarded by the Corporation for any period after the effective date of this part, unless the recipient of that grant has been selected on the basis of the competitive bidding process described in this part.

(b) The Corporation shall determine the service areas to be covered by grants or contracts and shall determine whether the population to be served will consist of all eligible clients within the service area or a specific subpopulation of eligible clients within one or more service areas.

(c) The use of the competitive bidding process to award grant(s) or contract(s) shall not constitute a termination or denial of refunding of financial assistance to a current recipient pursuant to parts 1606 and 1625 of this chapter.

(d) Wherever possible, the Corporation shall award no more than one grant or contract to provide legal assistance to eligible clients or a subpopulation of eligible clients within a service area. The Corporation may award more than one grant or contract to provide legal assistance to eligible clients or a subpopulation of eligible clients within a service area only when the Corporation determines that it is necessary to award more than one such grant or contract in order to ensure that all eligible clients within the service area will have access to a full range of high quality legal services in accordance with the LSC Act or other applicable law.

(e) In no event may the Corporation award a grant or contract for a term longer than five years. The amount of funding provided annually under each such grant or contract is subject to changes in congressional appropriations or restrictions on the use of those funds by the Corporation. A reduction in a recipient's annual funding required as a result of a change in the law or a reduction in funding appropriated to the Corporation shall not be considered a termination or denial of refunding under parts 1606 or 1625 of this chapter.

§ 1634.4 Announcement of competition.

(a) The Corporation shall give public notice that it intends to award a grant or contract for a service area on the basis of a competitive bidding process, shall take appropriate steps to announce the availability of such a grant or contract in the periodicals of State and local bar associations, and shall publish a notice of the Request For Proposals (RFP) in at least one daily newspaper of general circulation in the area to be served under the grant or contract. In addition, the Corporation shall notify current recipients, other bar associations, and other interested groups within the service area of the availability of the grant or contract and shall conduct such other outreach as the Corporation determines to be appropriate to ensure that interested parties are given an opportunity to participate in the competitive bidding process.

(b) The Corporation shall issue an RFP which shall include information

regarding: who may apply, application procedures, the selection process, selection criteria, the service areas that will be the subject of the competitive bidding process, the amount of funding available for the service area, if known, applicable timetables and deadlines, and the LSC Act, regulations, guidelines and instructions and any other applicable federal law. The RFP may also include any other information that the Corporation determines to be appropriate.

(c) The Corporation shall make a copy of the RFP available to any person, group or entity that requests a copy in accordance with procedures established by the Corporation.

§ 1634.5 Identification of qualified applicants for grants and contracts.

(a) The following persons, groups and entities are qualified applicants who may submit a notice of intent to compete and an application to participate in the competitive bidding process:

(1) Current recipients;

(2) Other non-profit organizations that have as a purpose the furnishing of legal assistance to eligible clients;

(3) Private attorneys, groups of attorneys or law firms (except that no private law firm that expends 50 percent or more of its resources and time litigating issues in the broad interests of a majority of the public may be awarded a grant or contract under the LSC Act);

(4) State or local governments;

(5) Substate regional planning and coordination agencies which are composed of substate areas and whose governing boards are controlled by locally elected officials.

(b) All persons, groups and entities listed in paragraph (a) of this section must have a governing or policy body consistent with the requirements of part 1607 of this chapter or other law that sets out requirements for recipients' governing bodies, unless such governing body requirements are inconsistent with applicable law.

(c) Applications may be submitted jointly by more than one qualified applicant so long as the application delineates the respective roles and responsibilities of each qualified applicant.

§ 1634.6 Notice of intent to compete.

(a) In order to participate in the competitive bidding process, an applicant must submit a notice of intent to compete on or before the date designated by the Corporation in the RFP. The Corporation may extend the date if necessary to take account of special circumstances or to permit the Corporation to solicit additional notices of intent to compete.

(b) At the time of the filing of the notice of intent to compete, each applicant must provide the Corporation with the following information as well as any additional information that the Corporation determines is appropriate:

(1) Names and resumes of principals and key staff;

(2) Names and resumes of current and proposed governing board or policy body members and their appointing organizations;

(3) Initial description of area proposed to be served by the applicant and the services to be provided.

§ 1634.7 Application process.

(a) The Corporation shall set a date for receipt of applications and shall announce the date in the RFP. The date shall afford applicants adequate opportunity, after filing the notice of intent to compete, to complete the application process. The Corporation may extend the application date if necessary to take account of special circumstances.

(b) The application shall be submitted in a form to be determined by the Corporation.

(c) A completed application shall include all of the information requested by the RFP. It may also include any additional information needed to fully address the selection criteria, and any other information requested by the Corporation. Incomplete applications will not be considered for awards by the Corporation.

(d) The Corporation shall establish a procedure to provide notification to applicants of receipt of the application.

§ 1634.8 Selection process.

(a) After receipt of all applications for a particular service area, Corporation staff shall:

(1) Review each application and any additional information that the Corporation has regarding each applicant, including for any applicant that is or includes a current or former recipient, past monitoring and compliance reports, performance evaluations and other pertinent records for the past six years;

(2) Request from an applicant and review any additional information that the Corporation determines is appropriate to evaluate the application fully;

(3) Conduct one or more on-site visits to an applicant if the Corporation determines that such visits are appropriate to evaluate the application fully;

(4) Summarize in writing information regarding the applicant that is not contained in the application if appropriate for the review process; and

(5) Convene a review panel unless there is only one applicant for a particular service area and the Corporation determines that use of a review panel is not appropriate. The review panel shall:

(i) Review the applications and the summaries prepared by the Corporation staff. The review panel may request other information identified by the Corporation as necessary to evaluate the applications fully; and

(ii) Make a written recommendation to the Corporation regarding the award of grants or contracts from the Corporation for a particular service area.

(6) After considering the recommendation made by the review panel, if a review panel was convened, make a staff recommendation to the President. The staff recommendation shall include the recommendation of the review panel and, if the staff recommendation differs from that of the review panel, an explanation of the basis for the difference in the recommendations.

(b) After reviewing the written recommendations, the President shall select the applicants to be awarded grants or contracts from the Corporation and the Corporation shall notify each applicant in writing of the President's decision regarding each applicant's application.

(c) In the event that there are no applicants for a service area or that the Corporation determines that no applicant meets the criteria and therefore determines not to award a grant or contract for a particular service area, the Corporation shall take all practical steps to ensure the continued provision of legal assistance in that service area. The Corporation shall have discretion to determine how legal assistance is to be provided to the service area, including, but not limited to, enlarging the service area of a neighboring recipient, putting a current recipient on month-to-month funding or entering into a short term, interim grant or contract with another qualified provider for the provision of legal assistance in the service area until the completion of a competitive bidding process within a reasonable period of time.

§1634.9 Selection criteria.

(a) The criteria to be used to select among qualified applicants shall include the following:

(1) Whether the applicant has a full understanding of the basic legal needs of the eligible clients in the area to be served;

(2) The quality, feasibility and cost-effectiveness of the applicant's legal services delivery and delivery approach in relation to the Corporation's Performance Criteria and the American Bar Association's Standards for Providers of Civil Legal Services to the Poor, as evidenced by, among other things, the applicant's experience with the delivery of the type of legal assistance contemplated under the proposal;

(3) Whether the applicant's governing or policy body meets or will meet all applicable requirements of the LSC Act, regulations, guidelines, instructions and any other requirements of law in accordance with a time schedule set out by the Corporation;

(4) The applicant's capacity to comply with all other applicable provisions of the LSC Act, rules, regulations, guidelines and instructions, as well as with ethical requirements and any other requirements imposed by law. Evidence of the applicant's capacity to comply with this criterion may include, among other things, the applicant's compliance experience with the

Corporation or other funding sources or regulatory agencies, including but not limited to Federal or State agencies, bar associations or foundations, courts, IOLTA programs, and private foundations;

(5) The reputations of the applicant's principals and key staff;

(6) The applicant's knowledge of the various components of the legal services delivery system in the State and its willingness to coordinate with the various components as appropriate to assure the availability of a full range of legal assistance, including:

(i) its capacity to cooperate with State and local bar associations, private attorneys and pro bono programs to increase the involvement of private attorneys in the delivery of legal assistance and the availability of pro bono legal services to eligible clients; and

(ii) its knowledge of and willingness to cooperate with other legal services providers, community groups, public interest organizations and human services providers in the service area;

(7) The applicant's capacity to develop and increase non-Corporation resources;

(8) The applicant's capacity to ensure continuity in client services and representation of eligible clients with pending matters; and

(9) The applicant does not have known or potential conflicts of interest, institutional or otherwise, with the client community and demonstrates a capacity to protect against such conflicts.

(b) In selecting recipients of awards for grants or contracts under this part, the Corporation shall not grant any preference to current or previous recipients of funds from the Corporation.

§ 1634.10 Transition provisions.

(a) When the competitive bidding process results in the award of a grant or contract to an applicant, other than the current recipient, to serve the area currently served by that recipient, the Corporation—

(1) may provide, if the law permits, continued funding to the current recipient, for a period of time and at a level to be determined by the Corporation after consultation with the recipient, to ensure the prompt and orderly completion of or withdrawal from pending cases or matters or the transfer of such cases or matters to the new recipient or to other appropriate legal service providers in a manner consistent with the rules of ethics or professional responsibility for the jurisdiction in which those services are being provided; and

(2) shall ensure, after consultation with the recipient, the appropriate disposition of real and personal property purchased by the current recipient in whole or in part with Corporation funds consistent with the Corporation's policies.

(b) Awards of grants or contracts for legal assistance to any applicant that is not a current recipient may, in the Corporation's discretion, provide for incremental increases in funding up to the annualized level of the grant or contract award in order to ensure that the applicant has the capacity to utilize Corporation funds in an effective and economical manner.

§ 1634.11 Replacement of recipient that does not complete grant term.

In the event that a recipient is unable or unwilling to continue to perform the duties required under the terms of its grant or contract, the Corporation shall take all practical steps to ensure the continued provision of legal assistance in that service area. The Corporation shall have discretion to determine how legal assistance is to be provided to the service area, including, but not limited to, enlarging the service area of a neighboring recipient, putting a current recipient on month-to-month funding or entering into a short term, interim grant or contract with another qualified provider for the provision of legal assistance in the service area until the completion of a competitive bidding process within a reasonable period of time.

§ 1634.12 Emergency procedures and waivers.

The President of the Corporation may waive the requirements of §§ 1634.6 and 1634.8(a) (3) and (5) when necessary to comply with requirements imposed by law on the awards of grants and contracts for a particular fiscal year.

PART 1635—TIMEKEEPING REQUIREMENT

Sec.
1635.1 Purpose.
1635.2 Definitions.
1635.3 Timekeeping Requirement.
1635.4 Administrative Provisions.

AUTHORITY: 42 U.S.C. §§2996e(b)(1)(A), 2996g(a), 2996g(b), 2996g(e).

SOURCE: 61 FR 14263, Apr. 1, 1996, unless otherwise noted.

§1635.1 Purpose.

This Part is intended to improve accountability for the use of all funds of a recipient by:

(a) Assuring that allocations of expenditures of Corporation funds pursuant to 45 CFR part 1630 are supported by accurate and contemporaneous records of the cases, matters, and supporting activities for which the funds have been expended;

(b) Enhancing the ability of the recipient to determine the cost of specific functions; and

(c) Increasing the information available to the Corporation for assuring recipient compliance with Federal law and Corporation rules and regulations.

§1635.2 Definitions.

As used in this part—

(a) A ''case'' is a form of program service in which an attorney or paralegal of a recipient provides legal services to one or more specific clients, including, without limitation, providing representation in litigation, administrative proceedings, and negotiations, and such actions as advice, providing brief services and transactional assistance, and assistance with individual PAI cases.

(b) A ''matter'' is an action which contributes to the overall delivery of program services but does not involve direct legal advice to or legal representation of one or more specific clients. Examples of matters include both direct services, such as community education presentations, operating pro se clinics, providing information about the availability of legal assistance, and developing written materials explaining legal rights and responsibilities; and indirect services, such as training, continuing legal education, general supervision of program services, preparing and disseminating desk manuals, PAI recruitment, intake when no case is undertaken, and tracking substantive law developments.

(c) A ''supporting activity'' is any action that is not a case or matter, including management and general, and fundraising.

§1635.3 Timekeeping Requirement.

(a) All expenditures of funds for recipient actions are, by definition, for cases, matters, or supporting activities. The allocation of all expenditures must be carried out in accordance with 45 CFR part 1630.

(b) Time spent by attorneys and paralegals must be documented by time records which record the amount of time spent on each case, matter, or supporting activity.

(1) Time records must be created contemporaneously and account for time in increments not greater than one-quarter of an hour which comprise all of the efforts of the attorneys and paralegals for which compensation is paid.

(2) Each record of time spent must contain: for a case, a unique client name or case number; for matters or supporting activities, an identification of the category of action on which the time was spent.

(c) The timekeeping system must be implemented within 30 days of the effective date of this regulation or within 30 days of the effective date of a grant or contract, whichever is later.

(d) The timekeeping system must be able to aggregate time record information from the time of implementation on both closed and pending cases by legal problem type.

§1635.4 Administrative Provisions.

Time records required by this section shall be available for examination by auditors and representatives of the Corporation, and by any other person or entity statutorily entitled to access to such records. The Corporation shall not disclose any time record except to a Federal, State or local law enforcement official or to an official of an appropriate bar association for the purpose of enabling such bar association official to conduct an investigation of

an alleged violation of the rules of professional conduct.

PART 1636—CLIENT IDENTITY AND STATEMENT OF FACTS

Sec.
1636.1 Purpose.
1636.2 Requirements.
1636.3 Access to written statements.
1636.4 Applicability.
1636.5 Recipient policies, procedures and recordkeeping.

AUTHORITY: Pub. L. 104–134, 110 Stat. 1321.

SOURCE: 61 FR 45741, Aug. 29, 1996, unless otherwise noted.

§ 1636.1 Purpose.

The purpose of this rule is to ensure that, when an LSC recipient files a complaint in a court of law or otherwise initiates or participates in litigation against a defendant or engages in pre-complaint settlement negotiations, the recipient identifies the plaintiff it represents and assures that the plaintiff has a colorable claim.

§ 1636.2 Requirements.

(a) When a recipient files a complaint in a court of law or otherwise initiates or participates in litigation against a defendant, or before a recipient engages in pre-complaint settlement negotiations on behalf of a client who has authorized it to file suit in the event that the settlement negotiations are unsuccessful, it shall:

(1) identify each plaintiff by name in any complaint it files and identify each plaintiff it represents to prospective defendants in pre-litigation settlement negotiations, unless a court of competent jurisdiction has entered an order protecting the client from such disclosure based on a finding, after notice and an opportunity for a hearing on the matter, of probable, serious harm to the plaintiff if the disclosure is not prevented; and

(2) prepare a dated written statement signed by each plaintiff, enumerating the particular facts supporting the complaint, insofar as they are known to the plaintiff when the statement is signed.

(b) The statement of facts must be written in English and, if necessary, in a language other than English that the plaintiff understands.

(c) In the event of an emergency, where the recipient reasonably believes that delay is likely to cause harm to a significant safety, property or liberty interest of the client, the recipient may proceed with the litigation or negotiation without a signed statement of fact, provided that the statement is signed as soon as possible thereafter.

§ 1636.3 Access to written statements.

(a) Written statements of fact prepared in accordance with this part are to be kept on file by the recipient and made available to the Corporation or to any Federal department or agency auditing or monitoring the activities of the recipient of the Corporation or to any auditor or monitor receiving Federal funds to audit or monitor on behalf of a Federal department or agency or on behalf of the Corporation.

(b) This part does not give any other party any right of access to the plaintiff's written statement of facts, either in the lawsuit or through any other procedure. Access by other parties to the statement of facts is governed solely by the discovery rules of the court in which the action is brought.

§ 1636.4 Applicability.

This part applies to cases for which private attorneys are compensated by the recipient as well as to those cases initiated by the recipient's staff.

§ 1636.5 Recipient policies, procedures and recordkeeping.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

PART 1637—RESTRICTION ON LITIGATION ON BEHALF OF PRISONERS

Sec.
1637.1 Purpose.
1637.2 Definitions.
1637.3 Prohibition.
1637.4 Change in circumstances.
1637.5 Recipient policies, procedures and recordkeeping.

AUTHORITY: Pub. L. 104–134, 110 Stat. 1321, 42 U.S.C. 2996g(e).

SOURCE: 61 FR 45755, Aug. 29, 1996, unless otherwise noted.

§ 1637.1 Purpose.

This part is intended to ensure that recipients do not participate in any litigation on behalf of persons incarcerated in Federal, State or local prisons.

§ 1637.2 Definitions.

(a) *Incarcerated* means the involuntary physical restraint, in a facility dedicated to such restraint, of a person who has been arrested for or convicted of a crime.

(b) *Federal, State or local prison* means any facility maintained under governmental authority for purposes of housing persons who are incarcerated.

§ 1637.3 Prohibition.

A recipient may not participate in any civil litigation on behalf of a person who is incarcerated in a Federal, State or local prison, whether as a plaintiff or as a defendant, nor may a recipient participate on behalf of such an incarcerated person in any administrative proceeding challenging the conditions of incarceration.

§ 1637.4 Change in circumstances.

If, to the knowledge of the recipient, a client becomes incarcerated after litigation has commenced, the recipient must use its best efforts to withdraw promptly from the litigation, unless the period of incarceration is anticipated to be brief and the litigation is likely to continue beyond the period of incarceration.

§ 1637.5 Recipient policies, procedures and recordkeeping.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

PART 1638—RESTRICTION ON SOLICITATION

Sec.

AUTHORITY: Sec. 504(a)(18), Pub. L. 104–134, 110 Stat. 1321.

SOURCE: 61 FR 45756, Aug. 29, 1996, unless otherwise noted.

§ 1638.1 Purpose.

This part is designed to ensure that recipients and their employees do not solicit clients.

§ 1638.2 Definitions.

(a) *In-person* means a face-to-face encounter or a personal encounter via other means of communication such as a personal letter or telephone call.

(b) *Unsolicited advice* means advice to obtain counsel or take legal action given by a recipient or its employee to an individual who did not seek the advice or with whom the recipient does not have an attorney-client relationship.

§ 1638.3 Prohibition.

(a) Recipients and their employees are prohibited from representing a client as a result of in-person unsolicited advice.

(b) Recipients and their employees are also prohibited from referring to other recipients individuals to whom they have given in-person unsolicited advice.

§ 1638.4 Permissible activities.

(a) This part does not prohibit recipients or their employees from providing information regarding legal rights and responsibilities or providing information regarding the recipient's services and intake procedures through community legal education activities such as outreach, public service announcements, maintaining an ongoing presence in a courthouse to provide advice at the invitation of the court, disseminating community legal education publications, and giving presentations to groups that request it.

(b) A recipient may represent an otherwise eligible individual seeking legal assistance from the recipient as a result of information provided as described in §1638.4(a), provided that the

request has not resulted from in-person unsolicited advice.

§ 1638.5 Recipient policies.

Each recipient shall adopt written policies to implement the requirements of this part.

PART 1639—WELFARE REFORM

Sec.
1639.1 Purpose.
1639.2 Definitions.
1639.3 Prohibition.
1639.4 Permissible representation of eligible clients.
1639.5 Exceptions for public rulemaking and responding to requests with non-LSC funds.
1639.6 Recipient policies and procedures.

AUTHORITY: Pub. L. 104–134, 110 Stat. 1321; 42 U.S.C. 2996g(e).

SOURCE: 61 FR 45759, Aug. 29, 1996, unless otherwise noted.

§ 1639.1 Purpose.

The purpose of this rule is to ensure that LSC recipients do not initiate litigation, challenge or participate in efforts to reform a Federal or State welfare system. The rule also clarifies when recipients may engage in representation on behalf of an individual client seeking specific relief from a welfare agency and under what circumstances recipients may use funds from sources other than the Corporation to comment on public rulemaking or respond to requests from legislative or administrative officials involving a reform of a Federal or State welfare system.

§ 1639.2 Definitions.

(a)(1) *Federal or State welfare system* as used in this Part means:

(i) The Federal and State AFDC program under Title IV-A of the Social Security Act and new programs or provisions enacted by Congress or the States to replace or modify these programs, including State AFDC programs conducted under Federal waiver authority.

(ii) General Assistance or similar state means-tested programs conducted by States or by counties with State funding or under State mandates, and new programs or provisions enacted by States to replace or modify these programs.

(2) *Federal or State welfare system* does not include other public benefit programs unless changes to such programs are part of a reform of the AFDC or General Assistance programs.

(b) *Reform* of Federal or State Welfare Systems as used in this Part means a legislative or administrative effort to change key components of the Federal or State welfare system, including laws and regulations that implement the changes.

(c) *Existing law* as used in this part means Federal, State or local statutory laws or ordinances.

§ 1639.3 Prohibition.

Except as provided in §§ 1639.4 and 1639.5, recipients may not initiate legal representation, challenge or participate in any other way in efforts to reform a Federal or State welfare system. Prohibited activities include participation in:

(a) Litigation challenging laws or regulations enacted as part of a reform of a Federal or State welfare system;

(b) Rulemaking involving proposals that are being considered to implement a reform of a Federal or State welfare system;

(c) Lobbying or other advocacy before legislative or administrative bodies undertaken directly or through grassroots efforts involving pending or proposed legislation that is part of a reform of a Federal or State welfare system; or

(d) Litigation or other advocacy undertaken with regard to the granting or denying of State requests for Federal waivers of Federal requirements for AFDC.

§ 1639.4 Permissible representation of eligible clients.

Recipients may represent an individual eligible client who is seeking specific relief from a welfare agency if such relief does not involve an effort to amend or otherwise challenge existing law in effect on the date of the initiation of the representation.

§1639.5 Exceptions for public rulemaking and responding to requests with non-LSC funds.

Consistent with the provisions of §1612.6 (a)–(e), recipients may use non-LSC funds to comment in a public rulemaking proceeding or respond to a written request for information or testimony from a Federal, State or local agency, legislative body, or committee, or a member thereof, regarding an effort to reform a Federal or State welfare system.

§1639.6 Recipient policies and procedures.

Each recipient shall adopt written polices and procedures to guide its staff in complying with this part.

PART 1640—APPLICATION OF FEDERAL LAW TO LSC RECIPIENTS

Sec.

AUTHORITY: Pub. L. 104–134, 110 Stat. 1321.

SOURCE: 61 FR 45761, Aug. 29, 1996, unless otherwise noted.

§1640.1 Purpose.

The purpose of this rule is to ensure that recipients use their LSC funds in accordance with Federal law related to the proper use of Federal funds. This rule also identifies the Federal laws which apply and provides notice of the consequences to a recipient of a violation of such Federal laws by recipients, its employees or board members.

§1640.2 Definitions.

(a) (1) Federal law relating to the proper use of Federal funds means:

(i) 18 U.S.C. 201 (Bribery of Public Officials and Witnesses);

(ii) 18 U.S.C. 286 (Conspiracy to Defraud the Government With Respect to Claims);

(iii) 18 U.S.C. 287 (False, Fictitious or Fraudulent Claims);

(iv) 18 U.S.C. 371 (Conspiracy to Commit Offense or Defraud the United States);

(v) 18 U.S.C. 641 (Public Money, Property or Records);

(vi) 18 U.S.C. 1001 (Statements or Entries Generally);

(vii) 18 U.S.C. 1002 (Possession of False Papers to Defraud the United States);

(viii) 18 U.S.C. 1516 (Obstruction of Federal Audit);

(ix) 31 U.S.C. 3729 (False Claims);

(x) 31 U.S.C. 3730 (Civil Actions for False Claims), except that actions that are authorized by §3730(b) of such title to be brought by persons may not be brought against the Corporation, any recipient, subrecipient, grantee, or contractor of the Corporation, or any employee thereof;

(xi) 31 U.S.C. 3731 (False Claims Procedure);

(xii) 31 U.S.C. 3732 (False Claims Jurisdiction); and

(xiii) 31 U.S.C. 3733 (Civil Investigative Demands).

(2) For the purposes of the laws listed in paragraph (a)(1), LSC shall be considered a Federal agency and a recipient's LSC funds shall be considered to be Federal funds provided by grant or contract.

(b) A violation of the agreement means:

(1) That the recipient has been convicted of, or judgment has been entered against the recipient for, a violation of any of the laws listed in §1640.2(a)(1), with respect to its LSC grant or contract, by the court having jurisdiction of the matter and any appeals of the conviction or judgment have been exhausted or the time for the appeal has expired; or

(2) An employee or board member of the recipient has been convicted of, or judgment has been entered against the employee or board member for, a violation of any of the laws listed in §1640.2(a)(1) with respect to a recipient's grant or contract with LSC by the court having jurisdiction of the matter, and any appeals of the conviction or judgment have been exhausted or the time for appeal has expired, and the Corporation finds that the recipient has knowingly or through gross negligence allowed the employee or board member to engage in such activities.

§ 1640.3 Contractual agreement.

As a condition of receiving LSC funds, a recipient must enter into a written contractual agreement with the Corporation that, with respect to its LSC funds, it will be subject to the Federal laws listed in § 1640.2(a)(1). The agreement shall include a statement that all of the recipient's employees and board members have been informed of such Federal law and of the consequences of a violation of such law, both to the recipient and to themselves as individuals.

§ 1640.4 Violation of agreement.

(a) A violation of the agreement under § 1640.2(b)(1) shall result in the recipient's LSC grant or contract being terminated by the Corporation without need for a termination hearing. During the pendency of any appeal of a conviction or judgment, the Corporation may take such steps as it determines necessary to safeguard its funds.

(b) A violation of the agreement under § 1640.2(b)(2) shall result in the recipient's LSC grant or contract being terminated by the Corporation. Prior to such termination, the Corporation shall provide notice and an opportunity to be heard for the sole purpose of determining whether the recipient knowingly or through gross negligence allowed the employee or board member to engage in the activities which led to the conviction or judgment. During the pendency of any appeal of a conviction or judgment or during the pendency of a termination hearing, the Corporation may take such steps as it determines necessary to safeguard its funds.

§ 1640.5 Reporting requirement.

(a) The recipient shall give telephonic or other actual notice to the Corporation within two (2) working days of the date that:

(1) The recipient or any of the recipient's employees has been charged with a violation of any of the Federal laws listed in § 1640.2(a) with respect to its LSC funds; or

(2) It has reason to believe that any of its employees or board members have misused the recipient's LSC funds in violation of any of the Federal laws listed in § 1640.2(a).

(b) The notice required in paragraph (a) of this section shall be followed by written notice within ten (10) calendar days.

(c) A recipient or an employee or board member of the recipient has been ''charged with a violation'' when a governmental entity having authority to initiate such a proceeding has instituted action against the recipient or the recipient's employee and the proceeding is pending.

PART 1642—ATTORNEYS' FEES

Sec.

AUTHORITY: Sec. 504(a)(13), Pub. L. 104–134, 110 Stat 1321; 42 U.S.C. 2996e(d)(6).

SOURCE: 61 FR 45763, Aug. 29, 1996, unless otherwise noted.

§ 1642.1 Purpose.

This part is designed to insure that recipients or employees of recipients do not claim, or collect and retain attorneys' fees available under any Federal or State law permitting or requiring the awarding of attorneys' fees.

§ 1642.2 Definitions.

(a) *Attorneys' fees* means an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the awarding of such fees.

(b) An *award* is an order by a court or an administrative agency that the unsuccessful party pay the attorneys' fees of the prevailing party or an order by a court or administrative agency approving a settlement agreement of the parties which provides for payment of attorneys' fees by an adversarial party.

§ 1642.3 Prohibition.

(a) Except as permitted by paragraph (c) of this section, no recipient or employee of a recipient may claim, or collect and retain attorneys' fees in any

case undertaken on behalf of a client of the recipient.

(b) Except as permitted by paragraph (c) of this section, no recipient and no private attorney who receives compensation from a recipient to provide legal assistance to eligible clients under the recipient's private attorney involvement (PAI) program, judicare program, contract or other arrangement, may claim, or collect and retain attorneys' fees for such legal assistance.

(c) The prohibitions contained in paragraphs (a) and (b) of this section shall not apply to:

(1) Cases filed prior to April 26, 1996, except that the prohibition shall apply to any additional claim for the client made in a case pending on April 26, 1996;

(2) Cases to which a court appoints a recipient or an employee of a recipient to provide representation in a case pursuant to a statute or a court rule or practice equally applicable to all attorneys in the jurisdiction, and in which the recipient or employee receives compensation under the same terms and conditions as are applied generally to attorneys practicing in the court in which the appointment is made;

(3) Sanctions imposed by a court for violations of court rules, including Rule 11 or discovery rules of the Federal Rules of Civil Procedure, or similar State court rules; or

(4) Reimbursement of costs and expenses from an opposing party.

§1642.4 Accounting for and use of attorneys' fees.

(a) Attorneys' fees received by a recipient pursuant to §1642.3(c) for work supported in whole or in part with funds provided by the Corporation shall be allocated to the fund in which the recipient's LSC grant is recorded in the same proportion that the amount of Corporation funds expended bears to the total amount expended by the recipient to support the work.

(b) Attorneys' fees shall be recorded during the accounting period in which the money from the fee award is actually received by the recipient and may be expended for any purpose permitted by the LSC Act, regulations and other law applicable at the time the money is received.

§1642.5 Acceptance of reimbursement from a client.

(a) When a case results in a recovery of damages or statutory benefits, a recipient may accept reimbursement from the client for out-of-pocket costs and expenses incurred in connection with the case, if the client has agreed in writing to reimburse the recipient for such costs and expenses out of any such recovery.

(b) A recipient may require a client to pay court costs when the client does not qualify to proceed *in forma pauperis* under the rules of the jurisdiction.

§1642.6 Recipient policies, procedures and recordkeeping.

The recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

CHAPTER XVII—NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

PART 1700—ORGANIZATION AND FUNCTIONS

Sec.
1700.1 Creation.
1700.2 The Commission.
1700.3 Responsibilities.
1700.4 Functions, authority and duties.
1700.5 Executive Director.
1700.6 Office of the Commission.

AUTHORITY: 5 U.S.C. 552, 20 U.S.C. 1501 et seq.

SOURCE: 39 FR 39879, Nov. 12, 1974, unless otherwise noted.

§ 1700.1 Creation.

The National Commission on Libraries and Information Science was created on July 20, 1970, by the National Commission on Libraries and Information Science Act (20 U.S.C. 1051 et seq.) as an independent agency within the executive branch.

§ 1700.2 The Commission.

The Commission is composed of fifteen members, fourteen of whom are appointed by the President, subject to confirmation by the Senate and one of whom is the Librarian of Congress. One of the members of the Commission is designated by the President as Chairman.

§ 1700.3 Responsibilities.

The Commission is responsible for the development of overall plans to provide library and information services adequate to meet the needs of the people of the United States and to utilize most effectively the nation's educational resources in assuring optimum provision of such services.

§ 1700.4 Functions, authority and duties.

(a) *Functions.* To fulfill its responsibilities, the Commission is empowered to perform the following functions:

(1) To advise the President, Congress and other Federal, state and local governmental agencies, as well as private organizations regarding library and information services.

(2) To conduct studies, surveys and analyses of the library and informational needs of the nation, including the special needs of rural areas, economically, socially or culturally deprived persons and the elderly, and the means by which these needs may be met through the establishment or improvement of information centers, libraries in educational institutions, and through public, research, special and other types of libraries.

(3) To evaluate current library and information resources and services and current library and information science programs.

(4) To develop overall plans for meeting national library and information needs and for coordinating activities at the Federal, state and local levels.

(5) To extend and improve the nation's library and information-handling capabilities by the promotion of research and development.

(b) *Authority.* In carrying out its functions, the Commission is authorized:

(1) To contract with public and private agencies.

(2) To publish and disseminate reports, findings, studies and records including, but not limited to, reports of consultants, transcripts of testimony, summary reports, and reports of other Commission findings, studies, and recommendations.

(3) To conduct hearings.

(c) *Duties.* The Commission is obligated to submit to the President and the Congress (not later than January 31 of each year) a report on its activities during the preceding fiscal year.

§ 1700.5 Executive Director.

The Executive Director is directly responsible to the Commission, works under the supervision of the Chairman, and assists him in carrying out the Commission's organizational and administrative responsibilities. His principal role is to see that other staff units work together and promptly dispose of matters for which they are responsible. He is directly responsible for internal administrative matters such as personnel and budget planning.

§ 1700.6 Office of the Commission.

The Office of the Commission is located at 1717 K Street NW., Suite 601, Washington, DC 20036.

PART 1701—DISCLOSURE OF INFORMATION

AUTHORITY: 5 U.S.C. 552, 20 U.S.C. 1501 et seq.

§1701.1 Statement of policy.

The records of the National Commission on Libraries and Information Science shall be available to the fullest extent possible consistent with the terms and policies of 5 U.S.C. section 552 and on request will be promptly furnished to any member of the public.

[39 FR 39879, Nov. 4, 1974]

§1701.2 Disclosure of records and informational materials.

(a) With the exception of records and materials exempt from disclosure pursuant to paragraph (b) of this section, any person in accordance with the procedure provided in §1701.3 may inspect and copy any document of the National Commission on Libraries and Information Science.

(b) The provisions of 5 U.S.C. section 552 which require that agencies make their records available for public inspection and copying do not apply to Commission records which are:

(1)(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (ii) are in fact properly classified pursuant to such Executive Order;

(2) Related solely to the internal personnel rules and practices of the Commission;

(3) Specifically exempted from disclosure by statute;

(4) Trade secrets and information which is privileged or which relates to the business, personal or financial affairs of any person and which is furnished in confidence;

(5) Inter-agency and intra-agency memoranda or letters which would not be available by law to a private party in litigation with the Commission;

(6) Personnel, medical and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would: (i) Interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel.

(8) Contained in or related to examination, operating or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(c) The Commission shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter issued, adopted, or promulgated by the Commission since its creation on July 20, 1970, and required by section 552(a)(2) of title 5 to be made available or published. However, in accordance with 5 U.S.C. 552(a)(4)(A) the Commission deems that publication of the index or supplements thereto would be unnecessary and impracticable. Accordingly, it shall provide copies of such index on request but shall not publish and distribute it quarterly or more frequently.

[39 FR 39879, Nov. 12, 1974, as amended at 40 FR 7652, Feb. 21, 1975]

§1701.3 Requests.

(a) A member of the public may request records from the National Commission on Libraries and Information

Science by writing to the Associate Director, National Commission on Libraries and Information Science, Suite 601, 1717 K Street, NW, Washington, DC 20036.

(b) A request for access to records should reasonably describe the records requested such that Commission personnel will be able to locate them with a reasonable amount of effort. Where possible, specific information regarding dates, titles, file designations, and other information which may help identify the records should be supplied by the requester.

(c) Records or materials will be available for inspection and copying at the offices of the Commission during the normal business hours of regular business days or they may be obtained by mail.

[39 FR 39879, Nov. 12, 1974, as amended at 40 FR 7652, Feb. 21, 1975]

§ 1701.4 Fees.

(a) A fee may be charged for direct costs of document search and duplication at the rate of $0.10 per page for copying and $5.00 per hour for time expended in identifying and locating records.

(b) A fee may be waived in whole or in part where it is determined that it is in the public interest because furnishing the information can be considered as primarily benefiting the general public or where other circumstances indicate that a waiver is appropriate.

(c) The Commission may limit the number of copies of any document provided to any person.

[40 FR 7653, Feb. 21, 1975]

§ 1701.5 Prompt response.

(a) Within ten days (excluding Saturdays, Sundays and legal public holidays) of the receipt of a request, the Associate Director shall determine whether to comply with or deny such request and shall dispatch such determination to the requester, unless an extension is made under paragraph (c) of this section.

(b) Only the Associate Director may deny a request and is the ''person responsible for the denial'' within the meaning of 5 U.S.C. 552(a). When a denial is made at the behest of another agency, the person in that agency responsible for urging the denial may also be a ''person responsible for the denial'' if he is so advised before the Associate Director informs the requester that his request is denied.

(c) In unusual circumstances as specified in this paragraph, the Associate Director may extend the time for the initial determination of a request up to a total of ten days (excluding Saturdays, Sundays and legal public holidays). Extensions shall be made by written notice to the requester setting forth the reason for the extension and the date upon which a determination is expected to be dispatched. As used in this paragraph ''unusual circumstances'' means, but only to the extent necessary to the proper processing of the request—

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the Commission;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request.

(d) If no determination has been dispatched at the end of the ten-day period, or the last extension thereof, the requester may deem his request denied, and exercise a right of appeal in accordance with § 1701.7. When no determination can be dispatched within the applicable time limit, the Associate Director shall nevertheless continue to process the request. On expiration of the time limit he shall inform the requester of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his rights to treat the delay as a denial and appeal to the Executive Director in accordance with § 1701.7. He may also ask the requester to forgo appeal until a determination is made.

[40 FR 7653, Feb. 21, 1975]

§1701.6 Form of denial.

A reply denying a request shall be in writing, signed by the Associate Director, and shall include: (a) A specific reference to the exemption or exemptions under the Freedom of Information Act authorizing the withholding of the record, (b) brief explanation of how the exemption(s) applies to the record(s) withheld, (c) a statement that the denial may be appealed under §1701.7 within thirty days by writing to the Executive Director, National Commission on Libraries and Information Science, Suite 601, 1717 K Street NW., Washington, DC 20036, and (d) that judicial review will thereafter be available in the district in which the requester resides or has his principal place of business, the district in which the agency records are situated, or in the District of Columbia.

[40 FR 7653, Feb. 21, 1975]

§1701.7 Appeals.

(a) When the Associate Director has denied a request for records in whole or in part, the requester may, within thirty days of receipt of the letter notifying him of the denial, appeal to the Commission. Appeals to the Commission shall be in writing, addressed to the Executive Director, National Commission on Libraries and Information Science, 1717 K Street NW., Washington, DC 20036.

(b) The Commission will act upon an appeal within twenty days (excepting Saturdays, Sundays or legal public holidays) of its receipt, unless an extension is made under paragraph (c) of this section.

(c) In unusual circumstances as specified in this paragraph, the time for action on an appeal may be extended up to ten days (excluding Saturdays, Sundays, and legal public holidays) minus any extension granted at the initial request level pursuant to §1701.5(c). Such extension shall be made by written notice to the requester setting forth the reason for the extension and the date on which a determination is expected to be dispatched. As used in this paragraph ''unusual circumstances'' means, but only to the extent necessary to the proper processing of the appeal—

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the Commission;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request.

(d) If no determination of the appeal has been dispatched at the end of the twenty-day period or the last extension thereof, the requester is deemed to have exhausted his administrative remedies, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a)(4). When no determination can be dispatched within the applicable time limit, the appeal will nevertheless continue to be processed. On expiration of the time limit the requester shall be informed of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to seek judicial review in the United States district court in the district in which he resides or has his principal place of business, the district in which the records are situated, or the District of Columbia. The requester may be asked to forgo judicial review until determination of the appeal.

(e) The Commission's determination on appeal shall be in writing. An affirmance in whole or in part of a denial on appeal shall include: (1) A reference to the specific exemption or exemptions under the Freedom of Information Act authorizing the withholding of the record,

(2) A brief explanation of how the exemption(s) applies to the record(s) withheld, and

(3) A statement that judicial review of the denial is available in the district in which the requester resides or has his principal place of business, the district in which the agency records are situated, or the District of Columbia.

[40 FR 7653, Feb. 21, 1975]

PART 1703—GOVERNMENT IN THE SUNSHINE ACT

Subpart A—General Provisions

Subpart B—Procedures Governing Decisions About Meetings

Subpart C—Conduct of Meetings

Subpart D—Maintenance of Meeting Records

Subpart E—Administrative Review

Subpart F—Judicial Review

AUTHORITY: 5 U.S.C. 552b.

SOURCE: 42 FR 13553, Mar. 11, 1977, unless otherwise noted.

Subpart A—General Provisions

§ 1703.101 Purpose.

This part sets forth the regulations under which the Commission shall engage in public decision-making processes, make public announcement of meetings at which a quorum of or all Commission members consider and determine official Commission action, and inform the public of which meetings they are entitled to observe.

§ 1703.102 Definitions.

In this part:

(a) *Meeting* means the deliberations of a majority of the Commission members who have been appointed by the President and confirmed by the Senate where such deliberations determine or result in the joint conduct of official Commission business.

(b) *Member* means one of the Commissioners of the National Commission on Libraries and Information Science (NCLIS) who is appointed to that position by the President with the advice and consent of the Senate.

§ 1703.103 Applicability and scope.

This part applies to deliberations of a majority of the Commission members who have been appointed by the President and confirmed by the Senate. Excluded from coverage of this part are deliberations of interagency committees whose composition includes Commission members and deliberations of Commission officials who are not members; individual member's consideration of official agency business circulated to the members in writing for disposition or notation; and deliberations by the agency in determining whether or not to close a portion or portions of a meeting or series of meetings as provided in § 1703.202.

§ 1703.104 Open meeting policy.

The public is entitled to the fullest practicable information regarding the decision-making processes of the Commission. Commission meetings involving deliberations which determine or result in the joint conduct or disposition of official Commission business are presumptively open to the public. It is the intent of these regulations to open such meetings to public observation while protecting individuals' rights and the Commission's ability to carry out its responsibilities. Meetings or portions of meetings may be closed to public observation only if closure can be justified under one of the provisions set forth in § 1703.202.

Subpart B—Procedures Governing Decisions About Meetings

§1703.201 Decision to hold meeting.

When Commission members make a decision to hold a meeting, the proposed meeting will ordinarily be scheduled for a date no earlier than eight days after the decision to allow sufficient time to give appropriate public notice. At the time a decision is made to hold a meeting, the time, place, and subject matter of the meeting will be determined, as well as whether the meeting is to be open or closed to the public.

§1703.202 Provisions under which a meeting may be closed.

(a) A meeting or portion thereof may be closed to public observation, and information pertaining to such meeting may be withheld from the public, where the Commission determines that such portion or portions of its meeting or disclosure of such information is likely to:

(1) Disclose matters that are: (i) Specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and

(ii) In fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practices of an agency;

(3) Disclose matters specifically exempted from disclosure by statute (other than section 552 of this title). Provided that such statute: (i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would: (i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action, except this subparagraph shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) Specifically concern the agency's issuance of a subpoena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in section 554 of this title or otherwise involving a determination on the record after opportunity for a hearing.

(b) The Commission may exercise its authority to open to public observation a meeting which could be closed under one of the provisions of §1703.202(a), if

it would be in the public interest to do so. The Commission will determine whether the discussion comes within one of the specific exemptions. If the discussion is determined to be exempt, the Commission will consider and determine whether the public interest nevertheless requires that the meeting be open.

§ 1703.203 Decision to close meeting.

(a) Commission members may decide before the meeting to close to public observation a meeting or portion or portions thereof, or to withhold information pertaining to such meeting, only if a majority of the members vote on the record to take such action. No proxy votes on this action shall be allowed. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. If a decision is made to close a portion or portions of a meeting or a series of meetings, the Commission shall prepare a full written explanation of the closure action together with a list naming all persons expected to attend the meeting and identifying their affiliation.

(b) For every meeting or portion thereof which Commission members have voted to close, the Chairman of NCLIS shall certify that, in his or her opinion, the meeting may properly be closed to the public. In addition, the Chairman shall state each relevant exemptive provision as set forth in §1703.202(a). A copy of the Chairman's certification, together with a statement from the Chairman setting forth the time and place of the meeting and listing the persons present, shall be retained by the Commission.

(c) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Commission close such portion to the public for any of the reasons referred to in §1703.202 (a) (5), (6), or (7), the Commission members, upon request of any of the Commissioners, shall decide by recorded vote whether to close such portion. If a closure decision is made, the Commission shall prepare a full written explanation of the closure action together with a list naming all persons expected to attend the meeting and identifying their affiliation.

§ 1703.204 Public availability of recorded vote to close meeting.

Within one day of any vote taken on a proposal to close a meeting, the Commission shall make publicly available a record reflecting the vote of each member on the question. In addition, within one day of any vote which closes a portion or portions of a meeting to the public, the Commission shall make publicly available a full written explanation of its closure action together with a list naming all persons expected to attend and identifying their affiliation, unless such disclosure would reveal the information that the meeting itself was closed to protect.

§ 1703.205 Public announcement of meeting.

(a) Except as provided in §§1703.207 and 1703.208, the Commission shall make a public announcement at least one week before the scheduled meeting, to include the following:

(1) Time, place, and subject matter of the meeting;

(2) Whether the meeting is to be open or closed; and

(3) Name and telephone number of agency official who will respond to requests for information about the meeting.

(b) If announcement of the subject matter of a closed meeting would reveal the information that the meeting was closed to protect, the subject matter shall not be announced.

§ 1703.206 Providing information to the public.

Individuals or organizations interested in obtaining copies of information available in accordance with §1703.204 may request same under provisions set forth in §§1703.402 and 1704.404. Individuals or organizations having a special interest in activities of the Commission may request the Executive Director to the Commissioners

to place them on a mailing list for receipt of information available under §1703.205. The Commission shall provide information to publications whose readers are likely to have a special interest in the work of the Commission.

§1703.207 Change in meeting plans after public announcement.

(a) Following public announcement of a meeting, the time or place of a meeting may be changed only if the change is announced publicly at the earliest practicable time.

§1703.208 Meetings for extraordinary agency business.

Where agency business so requires, Commission members may decide by majority, recorded vote to schedule a meeting for a date earlier than eight days after the decision. Such a decision would obviate the general requirement for a public announcement at least one week before the scheduled meeting. At the earliest practicable time, however, the Commission will announce publicly the time, place, and subject matter of the meeting, whether the meeting is to be open or closed, and the name and telephone number of an agency official who will respond to requests for information about the meeting.

§1703.209 Notice of meeting in Federal Register.

Immediately following each public announcement required by this subpart, the following information, as applicable, shall be submitted for publication in the FEDERAL REGISTER:

(a) Notice of the time, place, and subject matter of a meeting;

(b) Whether the meeting is open or closed;

(c) Any change in one of the preceding; and

(d) The name and telephone number of an agency official who will respond to requests for information about the meeting.

Subpart C—Conduct of Meetings

§1703.301 Meeting place.

Meetings will be held in meeting rooms designated in the public announcement. Whenever the number of observers is greater than can be accommodated in the meeting room designated, every reasonable effort will be made to provide alternative facilities.

§1703.302 Role of observers.

The public may attend open meetings for the sole purpose of observation and may not record any of the discussions by means of electronic or other devices or cameras unless approved in advance by the Executive Committee of the Commission. Observers may not participate in meetings unless expressly invited or create distractions to interfere with the conduct and disposition of Commission business. Such participation or attempted participation shall be cause for removal of any person so engaged at the discretion of the presiding member of the Commission. When meetings are partially closed, observers will leave the meeting room promptly upon request so that discussion, of matters exempt under provisions of subpart B of this part, §1703.202, may take place expeditiously.

Subpart D—Maintenance of Meeting Records

§1703.401 Requirements for maintaining records of closed meetings.

(a) A record of each meeting or portion thereof which is closed to the public must be made and retained for two years or for one year after the conclusion of the Commission proceeding involved in the meeting. The record of any portion of a meeting closed to the public shall be a transcript or electronic recording.

(b) When minutes are produced, such minutes shall fully and clearly describe all matters discussed, and will provide a full and accurate summary of any actions taken and the reasons expressed therefor. The minutes must also reflect the vote of each member on any roll call vote taken during the proceedings and identify all documents produced at the meeting.

(c) The following documents produced under provisions of paragraph (b) of this section shall be retained by the agency as part of the minutes of the meeting:

(1) Certification by the Chairman that the meeting may properly be closed; and

(2) Statement from the presiding officer of the meeting setting forth the date, time and place of the meeting and listing the persons present.

§ 1703.402 Availability of records to the public.

(a) The Commission shall make promptly available to the public the minutes maintained as a record of a closed meeting, except for such information as may be withheld under one of the provisions of § 1703.202(a) of this report. Copies of such minutes, disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(b) The nonexempt part of the minutes shall be in the official custody of the Executive Director of the Commission. Appropriate facilities will be made available to any persons who make a request to review these records.

(c) Requests for copies of nonexempt parts of minutes, shall be directed to the Executive Director of the Commission. Such requests shall identify the records being sought and include a statement that whatever costs are involved in furnishing the records will be acceptable or, alternatively, that costs will be acceptable up to a specified amount.

§ 1703.403 Requests for records under Freedom of Information and Privacy Acts.

Requests to review or obtain copies of records other than the minutes of a meeting will be processed under the Freedom of Information Act (5 U.S.C. 552) or, where applicable, the Privacy Act (5 U.S.C. 552a).

§ 1703.404 Copying and transcription charges.

(a) The Commission will charge fees for furnishing records at the rate of ten cents per page for photocopies and at the actual cost of transcription. When the anticipated charges exceed $50, a deposit of 20 percent of the amount anticipated must be made within 30 days. Requested information will not be released until the deposit is received. Fees shall be paid by check or money order made payable to the National Commission on Libraries and Information Science.

(b) The Executive Director of the Commission has the discretion to waive charges whenever release of the copies is determined to be in the public interest.

Subpart E—Administrative Review

§ 1703.501 Administrative Review.

Any person who believes a Commission action governed by this part to be contrary to the provisions of this part may file an objection in writing with the Executive Director to the Commissioners. Wherever possible, the Executive Director will respond within two working days to objections concerning decisions to close meetings or portions thereof. Responses to objections concerning matters other than closed meetings will be made within ten working days.

Subpart F—Judicial Review

§ 1703.601 Judicial review.

Any person may bring an action in a United States District Court to challenge or enforce the provisions of this part or the manner of their implementation. Such action may be brought prior to or within sixty days after the meeting in question, except that if proper public announcement of the meeting is not made, the action may be instituted at any time within sixty days after such announcement is made. An action may be brought where the Commission meeting was or is to be held or in the District of Columbia.

PART 1705—PRIVACY REGULATIONS

Sec.

AUTHORITY: 5 U.S.C. 552a.

SOURCE: 43 FR 47195, Oct. 13, 1978, unless otherwise noted.

§1705.1 Purpose and scope.

These procedures provide the means by which individuals may safeguard their privacy by obtaining access to, and requesting amendments or corrections in, information, if any, about these individuals which is contained in the White House Conference Delegate/Alternate Certification File (D/AC File), which is under the control of the National Commission on Libraries and Information Science (hereafter, the Commission).

§1705.2 Definitions.

For the purpose of these procedures:

(a) The term *individual* means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) The term *maintain* includes maintain, collect, use or disseminate;

(c) The term *record* means any item or set of items about an individual that is maintained by the Commision in either hard copy or computerized form, including name, residence and other information obtained from the form, ''Certification of State/Territorial Delegates/Alternates to the White House Conference on Library and Information Services.''

(d) The term *routine use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

§1705.3 Procedures for requests pertaining to individual records in the D/AC File.

(a) An individual who wishes to know whether the D/AC File contains a record pertaining to him or her shall submit a written request to that effect to the System Manager at the Commission. The System Manager shall, within 10 days of receipt of such submission, inform the individual whether the D/AC File contains such a record.

(b) An individual who desires access to any identified record shall file a request therefor addressed to the System Manager indicating whether such individual intends to appear in person at the Commission's offices or whether he or she desires to receive a copy of any identified record through the mail.

§1705.4 Times, places, and requirements for identification of individuals making requests.

(a) An individual who, in accord with §1705.3(b) indicated that he or she would appear personally shall do so at the Commission's offices, 1717 K Street NW., Suite 601, Washington, DC, between the hours of 8:30 a.m. and 4 p.m. Monday through Friday (legal holidays excluded) and present either: (1) The response from the System Manager indicating that such a record exists; or

(2) A copy of the executed certification form, as well as another suitable form of identification, such as a valid drivers license or equivalent.

(b) In response to a request for mail delivery, the Commission will mail only to the home address appearing in the D/AC File a copy of the record for that individual within 10 working days.

§1705.5 Disclosure of requested information to individuals.

Upon verification of identity, the System Manager shall disclose to the individual: (a) The information contained in the record which pertains to that individual; and (b) the accounting of disclosures of the record, if any, required by 5 U.S.C. 552a(c).

§1705.6 Request for correction or amendment to the record.

If a person wishes a change to be made in the record, he or she should follow the procedures for making changes which are included in the instructions accompanying the certification form by which the information was obtained. Copies of these instructions will be mailed to any delegate/alternate upon request.

§ 1705.7 Agency review of request for correction or amendment of the record.

Within 10 days of the receipt of the request to correct or to amend the record, the System Manager will acknowledge in writing such receipt and promptly either: (a) Make any correction or amendment of any portion thereof which the individual believes is not accurate, relevant, timely, or complete and inform the individual of same: or

(b) Inform the individual of his or her refusal to correct or amend the record in accordance with the request, the reason for the refusal, and the procedures established by the Commission for the individual to request a review of that refusal.

§ 1705.8 Appeal of an initial adverse agency determination on correction or amendment of the record.

An individual who disagrees with the refusal of the System Manager to correct or to amend his or her record may submit a request for review of such refusal to the Chairman of the Commission, 1717 K Street NW., Suite 601, Washington, DC 20036. The Chairman will, not later than 30 days from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the Chairman extends such 30-day period. If, after his or her review, the Chairman also refuses to correct or to amend the record in accordance with the request, the individual may file with the Commission a concise statement setting forth the reasons for his or her disagreement with the refusal of the Commission and may seek judicial review of the Chairman's determination under 5 U.S.C. 552a(g)(1)(A).

§ 1705.9 Disclosure of record to a person other than the individual to whom the record pertains.

An individual to whom a record is to be disclosed in person may have a person of his or her own choosing accompany the individual when the record is disclosed.

§ 1705.10 Fees.

(a) The Commission will not charge an individual for the costs of making a search for a record or the costs of reviewing the record. When the Commission makes a copy of a record as a necessary part of the process of disclosing the record to an individual, the Commission will not charge the individual for the cost of making that copy.

(b) If an individual requests the Commission to furnish him or her with a copy of the record (when a copy has not otherwise been made as a necessary part of the process of disclosing the record to the individual) the Commission will charge a fee of $0.25 per page (maximum per page dimension of 8½ by 13 inches) to the extent that the request exceeds $5 in cost to the Commission. Requests not exceeding $5 in cost to the Commission will be met without cost to the requester.

§ 1705.11 Penalties.

Title 18 U.S.C. 1001, Crimes and Criminal Procedures, makes it a criminal offense, subject to a maximum fine of $10,000 or imprisonment for not more than 5 years or both to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States. Section 552a(i)(3) of the Privacy Act (5 U.S.C. 552a(i)(3)), makes it a misdemeanor, subject to a maximum fine of $5,000, to knowingly and willfully request or obtain any record concerning an individual under false pretenses. Section 552a(i) (1) and (2) of the Privacy Act (5 U.S.C. 552a(i) (1) and (2)) provide penalties for violations by agency employees of the Privacy Act or regulations established thereunder.

§ 1705.12 Exemptions.

No Commission records system is exempted from the provisions of 5 U.S.C. 552a as permitted under certain conditions by 5 U.S.C. 552a (j) and (k).

PART 1706—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 4578, 4579, Feb. 5, 1986, unless otherwise noted.

§1706.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§1706.102 Application.

This part applies to all programs or activities conducted by the agency.

§1706.103 Definitions.

For purposes of this part, the term—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Handicapped person means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(l) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one of more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term ''physical or mental impairment'' includes, but is

not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addition and alcholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

Qualified handicapped person means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(3) *Qualified handicapped person* is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by §1706.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

[51 FR 4578, 4579, Feb. 5, 1986; 51 FR 7543, Mar. 5, 1986]

§§ 1706.104—1706.109 [Reserved]

§ 1706.110 Self-evaluation.

(a) The agency shall, by April 9, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspections:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

§ 1706.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§1706.112—1706.129 [Reserved]

§1706.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualfied handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§1706.131—1706.139 [Reserved]

§1706.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 1706.141—1706.148 [Reserved]

§ 1706.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 1706.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 1706.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons; or

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1706.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is nor required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by June 6, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by April 7, 1989, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by October 7, 1986, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

[51 FR 4578, 4579, Feb. 5, 1986; 51 FR 7543, Mar. 5, 1986]

§1706.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§1706.152—1706.159 [Reserved]

§1706.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §1706.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§1706.161—1706.169 [Reserved]

§1706.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity

Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Deputy Director shall be responsible for coordinating implementation of this section. Complaints may be sent to Deputy Director, National Commission on Libraries and Information Science, Suite 3122, GSA–ROB 3, Washington, DC 20024.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found;

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by §1706.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 4578, 4579, Feb. 5, 1986, as amended at 51 FR 4578, Feb. 5, 1986]

§§1706.171—1706.999 [Reserved]

CHAPTER XVIII—HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

PART 1800—PRIVACY ACT OF 1974

AUTHORITY: 5 U.S.C. 552a; Pub. L. 93–579.

SOURCE: 41 FR 52677, Dec. 1, 1976, unless otherwise noted.

§ 1800.1 Purpose and scope.

The purposes of these regulations are to:

(a) Establish a procedure by which an individual can determine if the Harry S. Truman Scholarship Foundation (hereafter known as the Foundation) maintains a system of records which includes a record pertaining to the individual; and

(b) Establish a procedure by which an individual can gain access to a record pertaining to him or her for the purpose of review, amendment and/or correction.

§ 1800.2 Definitions.

For the purpose of these regulations—

(a) The term *individual* means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) The term *maintain* includes maintain, collect, use or disseminate;

(c) The term *record* means any item, collection or grouping of information about an individual that is maintained by the Foundation, including, but not limited to, his or her employment history, payroll information, and financial transactions and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as social security number;

(d) The term *system of records* means a group of any records under the control of the Foundation from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual; and

(e) The term *routine use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

§ 1800.3 Procedures for requests for access to individual records in a record system.

An individual shall submit a request to the Deputy Executive Secretary of the Foundation to determine if a system of records named by the individual contains a record pertaining to the individual. The individual shall submit a request to the Deputy Executive Secretary of the Foundation which states the individual's desire to review his or her record.

§ 1800.4 Times, places, and requirements for the identification of the individual making a request.

An individual making a request to the Deputy Executive Secretary of the Foundation pursuant to §1800.3 shall present the request at the Foundation offices, 712 Jackson Place, NW., Washington, DC 20006, on any business day between the hours of 9 a.m. and 5 p.m. The individual submitting the request should present himself or herself at the Foundation's offices with a form of identification which will permit the Foundation to verify that the individual is the same individual as contained in the record requested.

§ 1800.5 Access to requested information to the individual.

Upon verification of identity the Foundation shall disclose to the individual the information contained in the record which pertains to that individual.

§ 1800.6 Request for correction or amendment to the record.

The individual should submit a request to the Deputy Executive Secretary of the Foundation which states the individual's desire to correct or to amend his or her record. This request is to be made in accord with the provisions of § 1800.4.

§ 1800.7 Agency review of request for correction or amendment of the record.

Within ten working days of the receipt of the request to correct or to amend the record, the Deputy Executive Secretary of the Foundation will acknowledge in writing such receipt and promptly either—

(a) Make any correction or amendment of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(b) Inform the individual of his or her refusal to correct or to amend the record in accordance with the request, the reason for the refusal, and the procedures established by the Foundation for the individual to request a review of that refusal.

§ 1800.8 Appeal of an initial adverse agency determination on correction or amendment of the record.

An individual who disagrees with the refusal of the Deputy Executive Secretary of the Foundation to correct or to amend his or her record may submit a request for a review of such refusal to the Executive Secretary, Harry S. Truman Scholarship Foundation, 712 Jackson Place, NW., Washington, DC 20006. The Executive Secretary will, not later than thirty working days from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the Executive Secretary extends such thirty day period. If, after his or her review, the Executive Secretary also refuses to correct or to amend the record in accordance with the request, the individual may file with the Foundation a concise statement setting forth the reasons for his or her disagreement with the refusal of the Foundation and may seek judicial review of the Executive Secretary's determination under 5 U.S.C. 552a(g)(1)(A).

§ 1800.9 Disclosure of record to a person other than the individual to whom the record pertains.

The Foundation will not disclose a record to any individual other than to the individual to whom the record pertains without receiving the prior written consent of the individual to whom the record pertains, unless the disclosure has been listed as a ''routine use'' in the Foundation's notices of its systems of records.

§ 1800.10 Fees.

If an individual requests copies of his or her record, he or she shall be charged ten cents per page, excluding the cost of any search for review of the record, in advance of receipt of the pages.

PART 1801—HARRY S. TRUMAN SCHOLARSHIP PROGRAM

Subpart A—General

Sec.

Subpart B—Nominations

Subpart C—The Competition

Subpart D—Graduate Study and the Work Experience Program

Subpart E—Payments to Finalists and Scholars

Subpart F—Payment Conditions and Procedures

Subpart G—Duration of Scholarship

AUTHORITY: 20 U.S.C. 2001–2012.

SOURCE: 59 FR 43058, Aug. 22, 1994, unless otherwise noted.

Subpart A—General

§ 1801.1 Annual Truman Scholarship competition.

Each year, the Harry S. Truman Scholarship Foundation carries out a nationwide competition to select students to be Truman Scholars.

§ 1801.2 Truman Scholars are selected from qualified applicants from each State.

(a) At least one Truman Scholar is selected each year from each State in which there is a resident applicant who meets eligibility criteria in §§ 1801.3 and 1801.21 and who is recommended for appointment as a Truman Scholar as provided in § 1801.23.

(b) As used in this part, ''State'' means each of the States, the District of Columbia, the Commonwealth of Puerto Rico, and considered as a single entity: Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 1801.3 Students eligible for nomination.

A student is eligible to be nominated for a Truman Scholarship if he or she:

(a) Is a junior level student pursuing a bachelor's degree as a full-time student at an accredited institution of higher education and will receive a baccalaureate degree the following academic year; or, is a senior-level student and is a resident of a state which did not have a Truman Scholar the previous year (see § 1801.24);

(b) Has an undergraduate field of study that permits admission to a graduate program leading to a career in public service;

(c) Ranks in the upper quarter of his or her class; and

(d) Is a U.S. citizen, a U.S. national, or a permanent resident of the Commonwealth of the Northern Mariana Islands.

§ 1801.4 Definitions

As used in this part:

Academic year means the period of time, typically 8 or 9 months in which a full-time student would normally complete two semesters, three quarters, or the equivalent.

Foundation means the Harry S. Truman Scholarship Foundation.

Full-time student means a student who is carrying a sufficient number of credit hours or their equivalent to secure the degree or certificate toward which he or she is working, in no more time than the length of time normally taken at the institution of higher education.

Graduate study means the courses of study beyond the baccalaureate level which lead to an advanced degree.

Institution of higher education has the meaning given in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

Junior means a student who following completion of the current academic year has one more year of full-time course work to receive a baccalaureate degree.

President means the principal official responsible for the overall direction of the operations of an institution of higher education.

Public service means employment in: governments at any level, the uniformed services, public interest organizations, non-governmental research and/or educational organizations, and non-profit organizations such as those whose primary purposes are to help needy or disadvantaged persons or to protect the environment.

Resident means a person who has legal residence in the State, recognized under State law. If a question arises concerning the State of residence, the Foundation determines, for the purposes of this program of which State the person is a resident, taking into account place of registration to vote, parent's placer of residence, and eligibility for ''in-State'' tuition rates at public institutions of higher education.

Scholar means a person who has been selected by the Foundation as a Truman Scholar, has accepted the Scholarship and agreed to the conditions of the award, and is eligible for Scholarship stipend(s).

Senior means the academic level recognized by the institution of higher education as being in the last year of study before receiving a baccalaureate degree.

Sophomore means the academic level recognized by the institution of higher education has having second year standing.

Term means the period which the institution of higher education uses to divide its academic year; Semester, trimester, or quarter.

Subpart B—Nominations

§ 1801.10 Nomination by institution of higher education.

To be considered in the competition a student must be nominated by the institution of higher education that he or she attends.

§ 1801.11 Annual nomination.

(a) Except as provided in §§ 1801.11(b), 1801.12, and 1801.24, each institution of higher education may nominate up to three students annually. Each nominee may have legal residence in the same State as the institution or in a different State.

(b) The Foundation may announce each year in its Bulletin of Information special circumstances under which each institution may nominate one or more additional candidates.

(c) To nominate a student for the competition, the President of the institution or the designated Faculty Representative must send the student's application to the Foundation in accordance with §§ 1801.16 and 1801.17.

§ 1801.12 Institutions with more than one campus.

If an institution of higher education has more than one component separately listed in the current edition of the Directory of Postsecondary Institutions published by the U.S. Department of Education, each may nominate up to three students. However, a component that is organized solely for administrative purposes and has no students may not nominate a student.

§ 1801.13 Two-year institutions.

If an institution of higher education does not offer education beyond the sophomore level, the institution may nominate only students who have completed their sophomore year and have become full-time juniors at other accredited institutions of higher education. The Faculty Representatives at the two-year institutions must forward the nomination materials to the President or the Faculty Representative of the four-year institution attended by the nominee in sufficient time for certification that the nominee is a full-time student with junior-level academic standing and for transmission of the nominations materials of transfer students to the Foundation by the closing date for receipt of nominations.

§ 1801.15 Faculty representative.

(a) Each institution which nominates a student must give the Foundation the name, business address, and business telephone number of a member of the faculty who will serve as liaison between the institution and the Foundation.

(b) It is the role of this Faculty Representative to publicize the Truman Scholarship on campus, solicit recommendations of potential nominees

from members of the faculty, and insure that the institution's nominations, with all required supporting documents, are forwarded to the Foundation as required by § 1801.16 and the current Bulletin of Information.

(c) It is the role of the Faculty Representative or the President at a four-year institution to transmit to the Foundation the nomination materials of transfer students for receipt by the stated deadline. The institution may attach letters of endorsement for up to three transfer students.

§ 1801.16 Closing date for receipt of nominations.

The Foundation publishes an annual notice in the FEDERAL REGISTER of the date, usually December 2, by which time the Foundation must receive nominations at the address specified in the nominations materials in order to be considered by the Foundation.

§ 1801.17 Contents of application.

(a) The Foundation provides a form that must be used as the application.

(b) Each application must include the following:

(1) A certification of nomination and eligibility signed by the Faculty Representative or the President;

(2) A completed Nomination and Supporting Information Form signed by the nominee;

(3) An analysis of a public policy issue written by the nominee;

(4) A current official college transcript;

(5) Four letters of recommendation including one from the Faculty Representative or President; and a

(6) Statement that the student is willing to participate in a Truman Scholars Leadership program sponsored by the Foundation and to attend the awards ceremony.

Subpart C—The Competition

§ 1801.20 Selection of finalists.

(a) The Foundation selects finalists from the students who are nominated.

§ 1801.21 Evaluation criteria.

(a) The Foundation selects finalists from the students nominated primarily on the basis of the following criteria:

(1) Leadership abilities and potential;

(2) Suitability of the nominee's proposed program of study and its appropriateness for a leadership career in public service with substantial impact on public policies;

(3) Writing and analytic skills;

(4) Academic performance and potential to perform well in graduate school; and

(5) Quality and extent of public and community service and government involvement.

(b) The Foundation selects finalists solely on the basis of the information required under § 1801.17.

(c) In the event that the Foundation determines that there are less than two well-qualified candidates from a state, the Foundation may invite all four-year institutions that nominated candidates for this competition to submit additional nominations of candidates from this state or to revise and re-submit nominations of unsuccessful candidates from this state.

§ 1801.22 Interview of finalists with panel.

The Foundation invites each finalist to an interview with a regional review panel. Panels evaluate Truman Finalists primarily on:

(a) Leadership potential including vision, sensitivity, and communications skills;

(b) Commitment to a career in government or elsewhere in public service; and

(c) Intellectual strength, analytical abilities, and prospects of performing well in graduate school.

§ 1801.23 Recommendation by panel.

(a) Each Panel is asked to recommend to the Board of Trustees the name of one candidate from each state in the region to be appointed as a Truman Scholar. The Foundation may authorize each region review panel to recommend additional Scholars from the States in its region.

(b) The recommendations are based on the material required under § 1801.17 and, as determined in the interview, the panel's assessment of each finalist in terms of criteria presented in § 1801.22.

§ 1801.24 Nomination of seniors.

(a) In the event that a regional review panel determines that none of the finalists from a state meet all the requirements expected of a Truman Scholar, it does not have to provide a recommendation. The Foundation will carry over the Scholarship for that state making two Scholarships available the succeeding year. Seniors will be eligible to participate the succeeding year as well as juniors. Institutions may nominate up to three seniors for this extra Scholarship in addition to three juniors.

(b) If additional nominations are made under paragraph (a) of this section, the applications must meet the requirements of Subpart B of this part, and are considered under the procedures of this subpart.

§ 1801.25 Selection of Truman Scholars by the Foundation.

The Foundation names Truman Scholars after receiving recommendations from the regional review panels.

Subpart D—Graduate Study and the Work Experience Program

§ 1801.30 Continuation into graduate study.

(a) The Foundation will not conduct a new and separate competition for graduate scholarships, nor will it add new Truman Scholars at the graduate level.

(b) Only Scholars who satisfactorily complete their undergraduate education and who comply with § 1801.31 shall be eligible for continued Foundation support for an approved program of graduate study.

§ 1801.31 Approval of graduate study programs by the Foundation.

(a) By December 1, Scholars desiring Foundation support for graduate study the following academic year must submit a proposed program of graduate study to the Foundation for approval. The graduate study program proposed for approval may differ from that proposed by the Scholar when nominated for a Truman Scholarship. Factors to be used by the Foundation in considering approval include being consistent with:

(1) Field of study initially proposed in the Scholar's Nomination and Supporting Information Form;

(2) Graduate school programs given priority in the current Bulletin of Information;

(3) Undergraduate educational program and work experience of the Scholar; and

(4) Preparation specifically for a career in public service.

(b) Foundation approval in writing of the Scholar's proposal is required before financial support is granted for graduate work.

(c) Scholars must include in their submission to the Foundation a statement of interest in a career in public service that specifies in detail how their graduate program and their overall educational and work experience plans will realistically prepare them for their chosen career goal in government or elsewhere in the public service. The Foundation issues guidelines to help Scholars prepare their proposals.

(d) After completing his or her undergraduate studies, a Scholar may request in writing each year a deferral of support for graduate studies. Deferrals must be requested no later than June 15 for the succeeding academic year. Scholars failing to request a year's deferral and to receive written approval from the Foundation will lose one year of funding support for each year for which they fail to request and receive deferrals. Total deferrals may not exceed four years unless an extension is approved by the Foundation. Extensions are generally granted only for Scholars attending graduate or professional school and supported by other scholarships or private resources or for Scholars with commitments to the uniformed services.

§ 1801.32 Eligible colleges and degree programs.

(a) Truman Scholars at the graduate level may use Foundation support to study at any accredited institution that offers graduate study appropriate and relevant to their public service career goals.

(b) They may enroll in any relevant graduate program for a career in public service. A wide variety of fields of study can lead to careers in public service including—but not limited to—agriculture, biology and environmental sciences, engineering, mathematics, physical and social sciences as well as traditional fields such as economics, education, government, history, international relations, law, medicine and public health, political science, and public administration and public policy.

(c) Foundation support for graduate study is restricted to three years of full-time study for Scholars selected in 1991 and subsequent years from four year institutions and to two years for all other Scholars.

§ 1801.33 Public service internships and employment prior to graduate study.

The Foundation encourages all Scholars to consider participating in paid internships, regular employment, or in voluntary programs of work experience in the government or in other public service organizations before attending graduate school. The Foundation may give preference in its selection process to nominees planning such internships and employment.

Subpart E—Payments to Finalists and Scholars

§ 1801.40 Travel expenses of finalists.

The Foundation will provide support for intercity round trip transportation from the finalist's place of study to the interview site. The Foundation does not reimburse finalists for lodging, meals, local transportation, or other expenses. The Foundation announces the terms and conditions of support in the annual Bulletin of Information.

§ 1801.41 Scholarship stipends.

The award covers eligible expenses in the following categories: tuition, fees, books, and room and board. Payments from the Foundation may be received to supplement, but not to duplicate, benefits received by the Scholar from the educational institution or from other foundations or organizations.

The benefits received from all sources combined may not exceed the costs of tuition, fees, books, and room and board as determined by the Foundation.

(a) Scholars selected in 1990 and prior years are eligible to receive annually up to $7,000.

(b) Scholars selected in 1991 and in subsequent years are eligible to receive a total of no more than $30,000. Each Scholar is eligible to receive up to $3000 for the senior year of undergraduate education. Scholars in graduate programs planning to receive degrees in one to two years are eligible to receive up to $13,500 per year or $10,000 (adjusted annually from January 1985 to reflect increases, if any, in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics), whichever is less. Scholars in graduate programs requiring three or more years of academic study are eligible to receive up to $9000 per year for a maximum of three years.

§ 1801.42 Definition of "fee".

Fee, in this part, means a typical and usual non-refundable charge by the institution of higher education for a service, a privilege, or the use of property which is required for a Scholars' enrollment and registration.

§ 1801.43 Allowance of books.

The cost allowance for a Scholar's books is $1000 per year. This figure may be increased by the Foundation with the new figure published in the Bulletin of Information.

§ 1801.44 Allowance for room and board.

The cost allowed for a Scholar's room and board is the amount the institution of higher education reports to the Foundation as the average cost of room and board for the Scholar's institution, given the type of housing the Scholar occupies.

§ 1801.45 Deduction for benefits from other sources.

The cost allowed for a Scholar's tuition, fees, books, room and board must be reduced to the extent that the cost

is paid by another organization or provided for or waived by the Scholar's institution.

Subpart F—Payment Conditions and Procedures

§ 1801.50 Acceptance of the scholarship.

To receive any payment, a Scholar must sign an acceptance of the scholarship and acknowledgment of the conditions of the award and submit it to the Foundation.

§ 1801.51 Report at the beginning of each term.

(a) To receive a Scholarship stipend, a Scholar must submit a current Payment Request Form containing the following:

(1) A statement of the Scholar's costs for tuition, fees, books, room and board;

(2) A certification by an authorized official of the institution that the statement of those costs is accurate;

(3) A certification of the amounts of those costs that are paid or waived by the institution or paid by another organization.

(4) A certification by an authorized official of the institution that the Scholar is a full-time student and is taking a course of study, training, or other educational activities to prepare for a career in public service; and is not engaged in gainful employment that interferes with the Scholar's studies.

(5) A certification by an authorized official of the institution that the Scholar is in academic good standing.

(b) At the beginning of the academic year, the Scholar must have his or her institution submit a certified Educational Expense Form showing the charges for tuition, fees, books, room and board and other expenses required for the academic year in which the Scholar will request Foundation support.

§ 1801.52 Payment schedule.

The Foundation will pay the Scholar a portion of the award after each report submitted under § 1801.51.

§ 1801.53 Postponement of payment.

(a) A Scholar may request the Foundation to postpone one or more payments because of sickness or other circumstances.

(b) If the Foundation grants a postponement, it may impose such conditions as necessary.

§ 1801.54 Annual report.

(a) Scholars with remaining eligibility for scholarship stipends must submit no later than July 15 an annual report to the Foundation.

(b) The annual report should be in narrative form and cover: courses taken and grades earned; courses planned for the coming year if Foundation support will be requested; public service and school activities; part-time or full-time employment and summer employment or internships; public service career goals and ambitions; and achievements, awards and recognition, publications or significant developments.

(c) Newly selected Scholars are required to submit an annual report updating the Foundation on their activities and accomplishments since the time they submitted their applications for the Truman Award.

Subpart G—Duration of Scholarship

§ 1801.60 Renewal of scholarship.

It is the intent of the Foundation to provide scholarship awards for a period not to exceed a total of four academic years, only in accordance with the regulations established by its Board of Trustees, and subject to an annual review for compliance with the requirements of this part.

§ 1801.61 Termination of scholarship.

(a) The Foundation may suspend or terminate a scholarship under the following specific conditions.

(1) Unsatisfactory academic performance for two terms, failure to pursue preparation for a career in public service, or loss of interest in a career in public service. Failure as an undergraduate to maintain a B or better

term average for two terms is considered unsatisfactory academic performance.

(2) Failure to meet the criteria in § 1801.3(d), 1801.31(b), or 1801.51.

(3) Providing false, misleading, or materially incomplete information on any report, payment request or other submission to the Foundation.

(b) Before it terminates a scholarship, the Foundation will notify the Scholar of the proposed action and will provide an opportunity to be heard with respect to the grounds for termination.

§ 1801.62 Recovery of scholarship funds.

(a) When a Truman Scholarship is terminated for any reason, the Scholar must return to the Foundation any stipend funds which have not yet been spent or which the Scholar may recover.

(b) A Scholar who fails for any reason to complete as a full-time student a school term for which he or she has received a Foundation stipend, must return the amount of that stipend to the Foundation. The Foundation may waive this requirement upon application by the Scholar showing goods cause for doing so.

PART 1802—PUBLIC MEETING PROCEDURES OF THE BOARD OF TRUSTEES

Sec.

AUTHORITY: 5 U.S.C. 552b(g); 20 U.S.C. 2001–2012.

SOURCE: 42 FR 14722, Mar. 16, 1977, unless otherwise noted.

§ 1802.1 Purpose and scope.

The Harry S. Truman Scholarship Foundation will provide the public with the fullest practical information regarding its decision-making processes while protecting the rights of individuals and the Foundation's abilities to carry out its responsibilities. Accordingly, these procedures apply to meetings of the Board of Trustees, Harry S. Truman Scholarship Foundation, including committees of the Board of Trustees.

§ 1802.2 Definitions.

As used in this part:

Board or *Board of Trustees* means the collegial body that conducts the business of the Harry S. Truman Scholarship Foundation as specified in section 5(b), Pub. L. 93–642 (20 U.S.C. 2004), consisting of:

(a) Eight persons appointed by the President, by and with the advice and consent of the Senate;

(b) Two members of the Senate, one from each political party, appointed by the President of the Senate;

(c) Two members of the House of Representatives, one from each political party, appointed by the Speaker; and

(d) The Commissioner of Education or his designee, who serves as an ex officio member of the Board.

Chairman means the presiding officer of the Board.

Committee means any formally designated subdivision of the Board, consisting of at least two Board members, authorized to act on behalf of the Board, including the Board's standing committees and any ad hoc committees appointed by the Board for special purposes.

Executive Secretary means the individual appointed by the Board to serve as the chief executive officer of the Foundation.

Meeting means the deliberations of at least the number of individual voting members of the Board required to take action on behalf of the Board, where such deliberations determine or result in the joint conduct or disposition of official business of the Board, but does not include: (1) Deliberations to open or close a meeting, to establish the agenda for a meeting, or to release or withhold information, required or permitted by § 1802.5 or § 1802.6, (2) notation voting or similar consideration of matters whether by circulation of material to members individually in writing, or polling of members individually

by telephone or telegram and (3) instances where individual members, authorized to conduct business on behalf of the Board or to take action on behalf of the Board, meet with members of the public or staff. Conference telephone calls that involve the requisite number of members, and otherwise come within the definition, are included.

Member means a member of the Board of Trustees.

Staff includes the employees of the Harry S. Truman Scholarship Foundation, other than the members of the Board.

§1802.3 Open meetings.

(a) Members shall not jointly conduct or dispose of business of the Board of Trustees other than in accordance with these procedures. Every portion of every meeting of the Board of Trustees or any committees of the Board shall be open to public observation subject to the exceptions provided in §1802.4.

(b) Open meetings will be attended by members of the Board, certain staff, and any other individual or group desiring to observe the meeting. The public will be invited to observe and listen to the meeting but not to participate. The use of cameras and disruptive recording devices will not be permitted.

§1802.4 Grounds on which meetings may be closed, or information may be withheld.

Except in a case where the Board or a committee finds that the public interest requires otherwise, the open meeting requirement as set forth in the second sentence of §1802.3(a) shall not apply to any portion of a Board or committee meeting, and the informational disclosure requirements of §§1802.5 and 1802.6 shall not apply to any information pertaining to such meeting otherwise required by this part to be disclosed to the public, where the Board or committee, as applicable, properly determines that such portion or portions of its meetings or the disclosure of such information is likely to:

(a) Disclose matters that are: (1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy and (2) in fact properly classified pursuant to such Executive Order;

(b) Relate solely to the internal personnel rules and practices of the Harry S. Truman Scholarship Foundation;

(c) Disclose matters specifically exempted from disclosure by statute (other than section 552, Title 5, United States Code), provided that such statute: (1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Disclose trade secrets and commercial and financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would: (1) Interfere with enforcement proceedings,

(2) Deprive a person of a right to a fair trial or an impartial adjudication,

(3) Constitute an unwarranted invasion of personal privacy,

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(5) Disclose investigative techniques and procedures, or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(i) Disclose information the premature disclosure of which would be

likely to significantly frustrate implementation of a proposed agency action, except that this paragraph shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(j) Specifically concern the issuance of a subpoena, or Foundation participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Foundation of a particular case of formal adjudication pursuant to the procedures in section 554 of title 5, United States Code, or otherwise involving a determination on the record after opportunity for a hearing.

§ 1802.5 Procedure for announcing meetings.

(a) Except to the extent that such information is exempt from disclosure under the provisions of § 1802.4, in the case of each Board or committee meeting, the Executive Secretary, acting at the direction of the Board, shall publish in the FEDERAL REGISTER, at least seven days before the meeting, the following information:

(1) Time of the meeting;

(2) Place of the meeting;

(3) Subject matter of the meeting;

(4) Whether the meeting or parts thereof are to be open or closed to the public; and

(5) The name and phone number of the person designated by the Board or committee to respond to requests for information about the meeting.

(b) The seven-day period for the public announcement required by paragraph (a) of this section may be reduced if a majority of the members of the Board or committee, as applicable, determine by a recorded vote that Board or committee business requires that such expedited meeting be called at an earlier date. The Board or committee shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

(c) The time or place of a meeting may be changed following the public announcement required by paragraph (a) only if the Executive Secretary, acting at the direction of the Board, publicly announces such change at the earliest practicable time. Such change need not be voted on by the members.

(d) The subject matter of a meeting, or the determination of the Board or committee, as applicable, to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by paragraph (a) of this section only if: (1) A majority of the entire voting membership of the Board or a majority of the entire voting membership of a committee, determines by a recorded vote that Board or committee business so requires and that no earlier announcement of the change was possible, and

(2) The Board or committee publicly announces such change and the vote of each member upon such change at the earliest practicable time.

(e) The ''earliest practicable time'' as used in this section, means as soon as possible, which should in few, if any, instances be no later than commencement of the meeting or portion in question.

(f) Immediately following each public announcement required by this section, notice of the time, place and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the person designated by the Board or committee to respond to requests for information about the meeting, shall be submitted for publication in the FEDERAL REGISTER.

§ 1802.6 Procedure for closing meetings.

(a) Action to close a meeting or a portion thereof, pursuant to the exemptions set forth in § 1802.4, shall be taken only when a majority of the entire voting membership of the Board or a majority of the entire voting membership of a committee, as applicable, vote to take such action. Any such action shall include a specific finding by the Board that an open meeting is not required by the public interest.

(b) A separate vote of the Board or committee members shall be taken with respect to each Board or committee meeting, a portion or portions of which are proposed to be closed to the public pursuant to §1802.4 or with respect to any information which is proposed to be withheld under §1802.4.

(c) A single vote of the Board or committee may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than 30 days after the initial meeting in such series.

(d) The vote of each member shall be recorded, and may be by notation voting, telephone polling or similar consideration.

(e) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Board or a committee close such portion to the public under any of the exemptions relating to personal privacy, criminal accusation, or law enforcement information referred to in paragraph (e), (f), or (g) of §1802.4, the Board or committee, as applicable, upon request of any one of its members, shall vote by recorded vote whether to close such meeting. Where the Board receives such a request prior to a meeting, the Board may ascertain by notation voting, or similar consideration, the vote of each member of the Board, or committee, as applicable, as to the following:

(1) Whether the business of the Board or committee permits consideration of the request at the next meeting, and delay of the matter in issue until the meeting following, or

(2) Whether the members wish to close the meeting.

(f) Within one day of any vote taken pursuant to paragraph (a), (b), (c) or (e), of this section, the Board or committee shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the Board or committee shall, within one day of the vote taken pursuant to paragraph (a), (b), (c), or (e) of this section, make publicly available a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation. The information required by this paragraph shall be disclosed except to the extent it is exempt from disclosure under the provisions of §1802.4.

(g) For every meeting closed pursuant to §1802.4, the General Counsel of the Harry S. Truman Scholarship Foundation shall certify before the meeting may be closed that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the Board as part of the transcript, recording or minutes required by §1802.7.

§1802.7 Transcripts, recordings, minutes of meetings.

(a) The Board of Trustees shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting closed to the public pursuant to paragraph (j) of §1802.4, the Board shall maintain either such a transcript or recording, or a set of minutes.

(b) Where minutes are maintained they shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons for such actions, including a description of each of the views expressed on any item and the record of any roll call vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(c) The Board shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any Board proceeding with respect to which

the meeting or portion was held, whichever occurs later.

(d) Public availability of records shall be as follows:

(1) Within ten days of receipt of a request for information (excluding Saturdays, Sundays, and legal public holidays), the Foundation shall make available to the public, in the offices of the Harry S. Truman Scholarship Foundation, 712 Jackson Place NW., Washington, DC, the transcript, electronic recording, or minutes of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting except for such item or items of such discussion or testimony as the General Counsel determines to contain information which may be withheld under § 1802.4.

(2) Copies of such transcript, or minutes, or a transcription of such recording disclosing the identify of each speaker, shall be available at the actual cost of duplication or transcription.

(3) The determination of the General Counsel to withhold information pursuant to paragraph (d)(1) of this section may be appealed to the Board. The appeal shall be circulated to individual Board members. The Board shall make a determination to withhold or release the requested information within twenty days from the date of receipt of a written request for review (excluding Saturdays, Sundays, and legal public holidays).

(4) A written request for review shall be deemed received by the Board when it has arrived at the offices of the Board in a form that describes in reasonable detail the material sought.

PART 1803—NONDISCRIMINATION ON THE BASIS OF HANDICAP

Sec.

AUTHORITY: 29 U.S.C. 794.

SOURCE: 54 FR 4795, Jan. 31, 1989, unless otherwise noted.

§ 1803.1 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by executive agencies.

§ 1803.2 Application.

This part applies to all programs or activities conducted by the Foundation, except for programs or activities conducted outside the United States that do not involve individual(s) with handicaps in the United States.

§ 1803.3 Definitions.

For purposes of this part, the term—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of programs or activities conducted by the Foundation.

Complete complaint means a written statement containing: (1) Date and nature of the alleged violation of section 504; (2) the complainant's name and address; and (3) the signature of the complainant or of someone authorized to act on his or her behalf.

Complaints filed on behalf of classes or third parties shall describe or identify, by name if possible, the alleged victims of discrimination.

Executive Secretary means the Executive Secretary of the Harry S. Truman Scholarship Foundation.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Foundation means the Harry S. Truman Scholarship Foundation.

General Counsel means the General Counsel of the Harry S. Truman Scholarship Foundation.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term ''physical or mental impairment'' includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been classified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Foundation as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition, but is treated by the Foundation as having such an impairment.

Qualified individual with handicaps means an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, any Foundation program or activity. For purposes of employment, ''qualified individual with handicaps'' means ''qualified handicapped person'' as defined in 29 CFR 1613.702(f), which is made applicable to this part by §1803.10.

Section 504 means section 504 of the Rehabilitation Act of 1973, Pub. L. 93–112, 87 Stat. 394, 29 U.S.C. 794, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93–516, 88 Stat. 1617; the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. 95–602, 92 Stat. 2955; and by the Rehabilitation Act amendments of 1986, Pub. L. 99–506, 100 Stat. 1810. As used in this part, section 504 applies only to programs or activities conducted by the Foundation and not to federally assisted programs.

§1803.4 Self-evaluation.

(a) The Foundation shall, within one year of the effective date of this part, evaluate, with the assistance of interested persons, including individuals with handicaps or organizations representing individuals with handicaps, its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the Foundation shall proceed to make the necessary modification.

(b) The Foundation shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection—

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§1803.5 Notice.

The Foundation shall make available to employees, applicants, participants,

beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the Foundation as the Executive Secretary finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§ 1803.6 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity subject to this part.

(b) The Foundation may not, either directly or through arrangements with others, on the basis of handicap—

(1) Discriminate against a qualified individual with handicaps in the award or renewal of scholarships, through selection criteria or otherwise;

(2) Deny a qualified individual with handicaps the opportunity to participate as a member of boards or panels used to screen scholarship applicants;

(3) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(4) Otherwise subject a qualified individual with handicaps to discrimination.

(c) The Foundation may not, either directly or through arrangements with others, utilize criteria or methods of administration the purpose or effect of which would—

(1) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(2) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(d) The Foundation shall administer programs and activities in the most feasibly integrated setting appropriate to the needs of qualified individuals with handicaps.

§ 1803.7 Program accessibility: Existing facilities.

(a) The Foundation shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not necessarily require the Foundation to make each of its existing facilities accessible to and usable by individuals with handicaps, but no qualified individual with handicaps shall be denied the benefit of, be excluded from participation in, or otherwise be subjected to discrimination under any of the Foundation's programs and activities because any of the Foundation's facilities are inaccessible to or unusable by individuals with handicaps.

(b) When the Foundation uses facilities leased or otherwise provided by the General Services Administration (GSA), it shall request GSA to make any structural changes that the Foundation determines are required to provide necessary accessibility for individuals with handicaps, and shall inform that agency of any complaints regarding accessibility by individuals with handicaps.

(c) The Foundation periodically uses meeting rooms or similar facilities made available by non-federal entities. In any instances in which such temporarily used facilities are not readily accessible to qualified individuals with handicaps, the Foundation shall make alternative arrangements so that such qualified individuals with handicaps can participate fully in the Foundation's activity.

(d) This section does not require the Foundation to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administration burdens. In those circumstances where Foundation personnel believe that the proposed action would fundamentally alter a program or activity or would result in undue financial and administrative burdens, the Foundation has the burden of proving that compliance with paragraph (a) of this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Executive Secretary after

considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Foundation shall take other action not resulting in such an alteration or such burdens, but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the programs or activities.

§ 1803.8 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Foundation shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§ 1803.9 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Foundation. The definitions, requirements and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§ 1803.10 Communications.

(a) The Foundation shall take appropriate steps to assure that interested persons, including persons with impaired vision or hearing, can effectively communicate with the Foundation and obtain information as to the existence and availability of the Foundation's programs and activities.

(1) The Foundation shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in the scholarship interview process or other programs or activities conducted by the Foundation.

(i) In determining what type of auxiliary aid is necessary, the Foundation shall give primary consideration to the requests of the individual with handicaps.

(ii) The Foundation need not provide individually prescribed devices or other devices of a personal nature.

(2) When the Foundation communicates with applicants and beneficiaries by telephone, the Foundation shall use, for persons with impaired hearing, a telecommunication device for deaf persons or equally effective telecommunication device.

(b) The Foundation shall take appropriate steps to provide individuals with handicaps with information regarding their section 504 rights under the Foundation's programs or activities.

(c) This section does not require the Foundation to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Foundation personnel believe that the proposed action would fundamentally alter a program or activity or would result in undue financial and administrative burdens, the Foundation has the burden of proving that compliance with paragraphs (a) and (b) of this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Executive Secretary after considering all Foundation resources available for use in the funding and operation of a conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Foundation shall take other action not resulting in such an alteration or such burdens, but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the programs or activities.

§ 1803.11 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the Foundation.

(b) The Foundation shall process complaints alleging violations of § 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Executive Secretary.

(d) The Foundation shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The Foundation may extend this time period for good cause.

(e) If the Foundation receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The Foundation shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is used by the Foundation that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) The Foundation shall notify the complainant of the results of the investigation within 90 days of the receipt of a complete complaint over which it has jurisdiction. Notification must be in a letter, and must include—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation discovered; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by paragraph (f) of this section. The Foundation may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the General Counsel.

(j) The Foundation shall notify the complainant of the results of the appeal within 90 days of the receipt of the request. If the Foundation determines that it needs additional information from the complainant, it shall have 90 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (h) of this section may be extended with the permission of the Assistant Attorney General.

(l) The Foundation may delegate its authority for conducting complaint investigations to other federal agencies, but may not delegate to another agency the authority for making the final determination.

CHAPTER XXI—COMMISSION OF FINE ARTS

PART 2101—FUNCTIONS AND ORGANIZATION

Subpart A—Functions and Responsibilities of the Commission

Subpart B—General Organization

AUTHORITY: 40 U.S.C. 104, 36 Stat. 371; 40 U.S.C. 106, 74 Stat. 128; E.O. 1259, (Oct. 25, 1910); E.O. 1862, (Nov. 28, 1913) E.O. 3524, (July 28, 1921); 40 U.S.C. 121, 46 Stat. 366; 40 U.S.C. 121, 53 Stat. 1144; D.C. Code 5–801, 64 Stat. 903; 36 U.S.C. 124, 60 Stat. 317; 40 U.S.C. 72, 66 Stat. 781; 10 U.S.C. 4594, 71 Stat. 589, unless otherwise noted.

SOURCE: 44 FR 67050, Nov. 21, 1979, unless otherwise noted.

Subpart A—Functions and Responsibilities of the Commission

§ 2101.1 Statutory and Executive Order authority.

The Commission of Fine Arts (referred to as the ''Commission'') functions pursuant to statutes of the United States and Executive Orders of Presidents, as follows:

(a) *Public buildings, other structures, and parklands.* (1) For public buildings to be erected in the District of Columbia by the federal government and for other structures to be so erected which are important to the appearance of the city, the Commission comments and advises on the plans and on the merits of the designs before final approval or action;

(2) For statutes, fountains and monuments to be erected in the District of Columbia under authority of the federal government, the Commission advises upon their location in public squares, streets, and parks, upon the selection of models and upon the merits of the designs;

(3) For monuments to be erected at any location pursuant to the American Battle Monuments Act, the Commission approves the designs and materials before they are accepted by the Monuments Commission;

(4) For parks within the District of Columbia, when plans of importance are under consideration, the Commission advises upon the merits of the designs; and

(5) For the selection by the National Capital Planning Commission of lands suitable for development of the National Capital park, parkway, and playground system in the District of Columbia, Maryland, and Virginia, the Commission provides advice.

(b) *Private buildings bordering certain public areas in Washington, D.C.* For buildings to be erected or altered[1] in locations which border the Capitol, the White House, the intermediate portion of Pennsylvania Avenue, the Mall Park System, Lafayette Park, the Zoological Park, Rock Creek Park or Parkway, or Potomac Park or Parkway, or are otherwise within areas defined by the official plats prepared pursuant to Section 2 of the Shipstead-Luce Act, the Commission reviews the plans as they relate to height and appearance and to color and texture of the exteriors, and makes recommendations to the government of the District of Columbia, including ones for changes as in the judgement of the Commission are necessary to prevent reasonably avoidable impairment of the public values represented by the areas along which the buildings border. (The Shipstead-Luce Act, 46 Stat. 366 as amended (40 U.S.C. 121; D.C. Code 5–410).)

(c) *Georgetown buildings.* For buildings to be constructed, altered, reconstructed, or razed within the area of the District of Columbia known as

[1] Alteration does not include razing of a building (*Commissioner of the District of Columbia* v. *Bennenson,* D.C. Ct. of App., 1974, 329 A. 2d 437). Partial demolition, however, is viewed as an alteration (The Committee to Preserve Rhodes Tavern and the National Processional Route v. Oliver T. Carr Company, et al., U.S. Ct. of App. for D.C. Cir., 1979, 79–1457, Dept. Justice Brief for Fed. Appellee).

''Old Georgetown.'' The Commission reviews and reports to the District of Columbia Government on proposed exterior architectural features, height, appearance, color, and texture of exterior materials as would be seen from public space; and the Commission makes recommendations to such government as to the effect of the plans on the preservation and protection of places and areas that have historic interest or that manifest exemplary features and types of architecture, including recommendations for any changes in plans necessary in the judgement of the Commission to preserve the historic value of Old Georgetown, and takes any such actions as in the judgement of the Commission are right or proper in the circumstances. (Old Georgetown Act, 64 Stat. 903 (D.C. Code 5–801)

(d) *United States medals, insignia, and coins.* On medals, insignia, and coins to be produced by an executive department of the United States, the Commission advises as to the merits of their designs; and if requested to do so, the Commission advises the Heraldic Branch, Quartermaster Corps, Department of the Army, on merits of designs it proposes for medals, insignia, seals, and the like. (E.O. 3254 of July 28, 1921 and 71 Stat. 589 (10 U.S.C. 4594))

(e) *Questions of art with which the Federal Government is concerned.* When required to do so by the President or by either House of Congress, the Commission advises generally on questions of art, and whenever questions of such nature are submitted to it by an officer or department of the federal government the Commission advises and comments. (36 Stat. 371 (40 U.S.C. 104) and E.O. 1862 of November 28, 1913).

§ 2101.2 Relationships of Commission's functions to responsibilities of other government units.

(a) *Projects involving the Capitol building and the Library of Congress.* Plans concerning the Capitol building and the buildings of the Library of Congress are outside the purview of the Commission except as to questions on which the Congress requires the Commission to advise.

(b) *Other United States Government projects.* Officers and departments of the United States Government responsible for finally approving or acting upon proposed projects within the purview of the Commission's functions as described in § 2101.1 (a) and (d) are required first to submit plans or designs for such projects to the Commission and obtain its advice and comments.

(c) *Projects within the jurisdiction of the District of Columbia Government.* The District of Columbia seeks Commission advice on exterior alteration or new construction of public buildings or major public works within its boundaries. The District of Columbia Government also shall seek Commission advice on certain private construction requiring building or demolition permits from the D.C. Permit Branch (D.C. Law 5–422). These include certain actions by the District of Columbia Government pursuant to either D.C. Law 5–422 or D.C. Law 2–144 within areas subject to the Shipstead-Luce or Old Georgetown Acts (§ 2101.1 (b) and (c)) prior to the issuance of a permit.[2] Lot subdivision, alteration of buildings, demolition, or new construction at individually designated landmarks or within historic districts are further subject to the permit requirements of the Historic Landmark and Historic District Protection Act of 1978 (D.C. Law 2–144).[3]

Subpart B—General Organization

AUTHORITY: 36 Stat. 371 as amended (40 U.S.C. 104 and 106); sec. 3, 64 Stat. 903 (D.C. Code 5–801).

§ 2101.10 The Commission.

The Commission is composed of seven members, each of whom is appointed by the President and serves for a period of four years or until his or her successor is appointed and qualifies. The Chairman is elected by the members. The Commission is assisted

[2] Provisions of the Shipstead-Luce Act (§ 2101.1(b)) do not include full demolition, though partial demolition is viewed as an alteration.

[3] The Historic Sites Subdivision Amendment of 1976 (D.C. Law 1–80) purported to give the Commission advisory authority over subdivision permits within the areas covered by the Shipstead-Luce Act and the Old Georgetown Act, but the law was repealed by the 1978 Act (D.C. Law 2–144).

by a staff as authorized by the Commission.

§ 2101.11 Secretary to the Commission.

Subject to the direction of the Chairman, the Secretary to the Commission is responsible for providing secretarial and record-keeping services by the staff to support the functions of the Commission; for preparing the agenda of Commission meetings; for organizing the presentation before the Commission of plans, designs, or questions upon which it is to advise, comment, or respond; for interpreting the Commission's conclusions, advice, or recommendations on each matter submitted to it; and for maintaining custody of the Commission's records. The Assistant Secretary of the Commission shall carry out duties delegated to him by the Secretary and shall act in place of the Secretary during his absence or disability.

§ 2101.12 Georgetown Board of Architectural Consultants.

To assist the Commission in carrying out the purposes of the Old Georgetown Act (§2101.1(c)), a committee of three architects appointed for a term of three years by the Commission serves as the Board of Architectural Consultants without expense to the United States. This committee advises the Commission regarding designs and plans referred to it.

PART 2102—MEETINGS AND PROCEDURES OF THE COMMISSION

Subpart A—Commission Meetings

Sec.

Subpart B—Procedures on Submissions of Plans or Designs

AUTHORITY: Sec. 10, 86 Stat. 770 as amended (5 U.S.C., App. 1, Federal Advisory Committee Act 10); OMB Circular No. A–63 (36 FR 2306, January 23, 1973) as amended.

SOURCE: 44 FR 67051, Nov. 21, 1979, unless otherwise noted.

Subpart A—Commission Meetings.

§ 2102.1 Times and places of meetings.

Regular meetings of the Commission, open to the public, are held monthly on the second Tuesday of the month, beginning at 10:00 o'clock a.m., in its offices at 708 Jackson Place, NW., Washington, DC 20006, except that by action of the Commission a regular meeting in any particular month may be omitted or it may be held on another day or at a different time or place. A special meeting, open to the public, may be held in the interval between regular meetings upon call of the Chairman and five days' written notice of the time and place mailed to each member who does not in writing waive such notice. On all matters of official business, the Commission shall conduct its deliberations and reach its conclusions at such open meetings except as stated in §2101.12 provided, however, that Commission members may receive staff briefings or may have informal background discussions among themselves and the staff outside of such meetings.

§ 2102.2 Actions outside of meetings.

Between meetings in situations of emergency, the Commission may act through a canvass by the Secretary of individual members, provided that any action so taken is brought up and ratified at the next meeting. In addition, the Commission members may convene away from the Commission's offices to make inspections at the site of a proposed project or at the location of a mock-up for the project and may then and there reach its conclusions respecting such project which shall be recorded in the minutes of the meeting held on the same day or, if none was then held, in the minutes of the next meeting.

§ 2102.3 Public notice of meetings.

Notice of each meeting of the Commission shall be made at least one week in advance by posting in the lower lobby of the Commission's offices and by submission for publication in the FEDERAL REGISTER.

§ 2102.4 Public attendance and participation.

Interested persons are permitted to attend meetings of the Commission, to file statements with the Commission at or before a meeting, and to appear before the Commission when it is in meeting, provided that an appearance will be permitted only if it is germane to the functions and policies of the Commission and to the matter or issues then before the Commission and only if the presentation or argument is made in a concise manner within reasonable time limits and it avoids duplicating information or views already before the Commission. A decision of the Chairman as to the order of appearances and as to compliance with these regulations by any person shall be final unless the Commission determines otherwise.

§ 2102.5 Records and minutes; public inspection.

A detailed record of each meeting shall be made and kept which shall contain names of persons who appeared before the Commission, information or arguments presented orally, discussions held and conclusions, reached, together with copies of all written, printed, or graphic materials presented. The Secretary shall also prepare minutes of each meeting which shall state the time and place it was held and attendance by Commission members and staff and which shall contain a complete summary of matters discussed and conclusions reached and an explanation of the extent of public participation, including names of persons who presented oral or written statements and an estimate of the number of members of the public who attended; and he shall send a copy to each member of the Commission. The accuracy of all such minutes shall be certified by the Chairman. The minutes and any completed reports, studies, agenda or other documents made available to, or prepared for or by, the Commission shall be available for public inspection and, at the requesting party's expense, for copying at the offices of the Commission.

Subpart B—Procedures on Submissions of Plans or Designs

§ 2102.10 Timing, scope and content of submissions for proposed projects involving land, buildings, or other structures.

(a) A party proposing a project which is within the purview of the Commission's functions under § 2101.1 (a), (b), or (c) should make a submission when preliminary plans for the project are ready but before detailed plans and specifications or working drawings are prepared. In order to assure that a submission will be considered at the next scheduled meeting of the Commission, it should be delivered to the Commission's offices not later than five (5) days before the meeting; if it is a project subject to review first by the Georgetown Board, not later than three (3) days before the Georgetown Board meeting. The Commission will attempt to consider a submission which is not made in conformity with this schedule, but it reserves the right to postpone consideration until its next subsequent meeting.

(b) Each submission should state or disclose: (1) The nature, location, and justification of the project, including any relevant historical information about a building or other structure to be altered or razed,

(2) The identity of the owner or developer (or for public buildings, the governmental unit with authority to approve or act upon the plans) and of the architect,

(3) The functions, uses, and purpose of the project, and

(4) Other information to the extent it is relevant, such as area studies, site plans, building and landscape schematics, renderings, models, depictions or samples of exterior materials and components, and photographs of existing conditions to be affected by the project. Alternative proposals may be included within one submission. The

information submitted shall be sufficiently complete, detailed, and accurate as will enable the Commission to judge the ultimate character, siting, height, bulk, and appearance of the project, in its entirety, including the grounds within the scope of the project, its setting and environs, and its effect upon existing conditions and upon historical and prevailing architectural values.

(c) If a project consists of a first or intermediate phase of a contemplated larger program of construction, similar information about the eventual plans should accompany the submission. Even though a submission relates only to approval for razing or removal of a building or other structure, the project will be regarded as part of phased development, and the submission is subject to such requirement.

(d) If the project involves a statute, fountain or a monument within the purview of the Commission under §2101.1(a)(2), partial submissions should be made as appropriate to permit the Commission to advise on each aspect of the project starting with the selection of any artist to be employed.

(e) The Commission staff will advise owners and architects concerning the scope and content of particular submissions. Material relevant to the functions and policies of the Commission varies greatly depending upon the nature, size, and importance of the project to be reviewed by the Commission. Also, it is the policy of the Commission not to impose unnecessary burdens or delay on persons who make submissions to the Commission. However, the Commission at any meeting may decline to reach a conclusion about a proposed project if it deems the submission inadequate for its purposes, or it may condition its conclusions on the submission of further information to it at a later meeting or, in its discretion, to the staff of the Commission only.

(f) The Commission staff, members of the Georgetown Board, interested members of the public, or the submitting party may augment any submission by additional relevant information made available to the Commission before or at the meeting where the submission is considered. The Commission staff should also make available to the Commission at the meeting where a submission is considered information concerning prior considerations or conclusions of the Commission concerning the same project or earlier versions of it.

§2102.11 Scope and content of submissions for proposed medals, insignia, coins, seals, and the like.

Each submission of the design for a proposed item which is within the Commission's purview under §2101.1(d) should identify the sponsoring government unit and disclosure the uses and purposes of the item, the size and forms in which it will be produced, and the materials and finishes to be used, including colors if any, along with a sketch, model, or prototype.

§2102.12 Responses of Commission to submissions.

(a) The Commission before disposing of any project presented to it may ask for the proposed plans or designs to be changed in certain particulars and resubmitted or for the opportunity to review plans, designs, specifications in certain particulars at a later stage in their development and to see samples or mock-ups of materials or components; and when appropriate in the matter of a statute or other object of art, the Commission may ask for the opportunity to see a larger or full-scale model. All conclusions, advice or comments of the Commission which lead to further development of plans, designs, and specifications or to actual carrying out of the project are made in contemplation that such steps will conform in all substantial respects with the plans or designs submitted to the Commission including only such changes as the Commission may have recommended; and any other changes in plans or designs require further submission to the Commission.

(b) In the case of plans for a project subject to the Old Georgetown Act (§2101.1(c)), if the Commission does not respond with a report on such plans within forty-five days after their submission, its approval shall be assumed and a permit may be issued by the government of the District of Columbia.

PART 2103—STATEMENTS OF POLICY

§ 2103.1 General approaches to review of plans by the Commission.

The Commission functions relate to the appearance of proposed projects within its purview as they may be seen from public space. These functions are to serve the purpose of conserving and enhancing the visual assets which contribute significantly to the character and quality of Washington as the nation's capital and which meaningfully reflect the history and features of its development over nearly two centuries. Where existing conditions detract from the overall appearance of official Washington or historic Georgetown—such as conditions caused by temporary, deteriorated, or abandoned buildings of little or no historical or architectural value, by interrupted developments, or by vacant lots not devoted to public use as parks or squares—the Commission will favor suitable corrections to these conditions. When changes or additions are proposed in other circumstances, the Commission may consider whether the public need or value of the project or the private interests to be served thereby justify making any change or addition, and it will consider whether the project can be accomplished in reasonable harmony with the nearby area, with a minimum loss of attractive features of the existing building or site, with due deference to the historical and architectural values affected, and without creating an anomalous or disturbing element in the public view of the city.

(36 Stat. 371, 40 U.S.C. 104, as amended by 74 Stat. 128, 40 U.S.C. 106; Executive Order, (E.O. 1259 of Oct. 25, 1910; E.O. 1862 of Nov. 28, 1913; E.O. 3524 of July 28, 1921; 46 Stat. 366, 40 U.S.C. 121, as amended by 53 Stat. 1144, 40 U.S.C. 121; 64 Stat. 903, D.C. Code 5–801; 66 Stat. 781, 40 U.S.C. 72)

[44 FR 67053, Nov. 21, 1979]

PART 2104—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE COMMISSION OF FINE ARTS

Sec.

AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 22895, 22896, June 23, 1986, unless otherwise noted.

§ 2104.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 2104.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 2104.103 Definition.

For purposes of this part, the term—

Assistant Attorney General means the Assistant Attorney General, Civil

Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Handicapped person means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term ''physical or mental impairment'' includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alocoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Qualified handicapped person means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, a handicapped person who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency.

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can acheive the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) *Qualified handicapped person* is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by §2104.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§2104.104—2104.109 [Reserved]

§2104.110 Self-evaluation.

(a) The agency shall, by August 24, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

(1) a description of areas examined and any problems identified, and

(2) a description of any modifications made.

§2104.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§2104.112—2104.129 [Reserved]

§2104.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangments, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activites of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 2104.131—2104.139 [Reserved]

§ 2104.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 2104.141—2104.148 [Reserved]

§ 2104.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 2104.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 2104.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and

usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §2104.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of §2104.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to handicapped persons. In cases where a physical alteration to an historic property is not required because of §2104.150(a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide handicapped persons into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by October 21, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by August 22, 1989, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by February 23, 1987 a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan

shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 2104.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 2104.152—2104.159 [Reserved]

§ 2104.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually precribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf person (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and adminstrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 2104.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§ 2104.161—2104.169 [Reserved]

§ 2104.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Secretary, Commission of Fine Arts, shall be responsible for coordinating implementation of this section. Complaints may be sent to Secretary, Commission of Fine Arts, 708 Jackson Place NW., Washington, DC 20006.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by §2104.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 22895, 22896, June 23, 1986, as amended at 51 FR 22895, June 23, 1986]

§§2104.171—2104.999 [Reserved]

PART 2105—RULES FOR COMPLIANCE WITH 5 U.S.C. 552, THE FREEDOM OF INFORMATION ACT

Sec.

AUTHORITY: 5 U.S.C. 552, as amended.

SOURCE: 40 FR 40802, Sept. 4, 1975. Redesignated and amended at 51 FR 23056, June 25, 1986, unless otherwise noted.

EDITORIAL NOTE: The regulations in this part 2105 were formerly codified in 36 CFR chapter X, part 1000.

§2105.1 Purpose and scope.

This part contains the regulations of the Commission of Fine Arts implementing 5 U.S.C. 552. The regulations of this part provide information concerning the procedures by which records may be obtained from the Commission. Members and employees of the Commission may continue to furnish to the public, informally and without neglecting the rights of requesters described herein, information and records which prior to enactment of 5 U.S.C. 552 were furnished customarily in the regular performance of their duties.

Persons seeking information or records of the Commission may find it useful to consult with the Secretary before invoking the formal procedures set out below.

§ 2105.2 Requests for identifiable records and copies.

(a) Formal public requests for information from the records of the Commission of Fine Arts shall be made in writing with the letter clearly marked ''FREEDOM OF INFORMATION REQUEST.'' All such requests should be addressed to the Secretary, Commission of Fine Arts, 708 Jackson Place, NW., Washington, DC 20006.

(b) Records must be reasonably described. A request for all records falling within a reasonably specific category shall be regarded as conforming to the requirement that records be reasonably described if it enables the records requested to be identified by any process that is not unreasonably burdensome or disruptive of Commission operations.

§ 2105.3 Action on initial requests.

(a) The Secretary will make a determination as to whether or not to release requested information. Generally, determination will be made to release the requested information if: (1) It is not exempt from disclosure or

(2) It is exempt from disclosure but its withholding is neither required by statute, nor supported by sound grounds.

(b) Determination will be dispatched within ten days, excluding Saturdays, Sundays, and legal public holidays, after initial receipt of the request.

(c) In unusual circumstances, the time for initial determination on requests may be delayed up to a total of ten additional days, excluding Saturdays, Sundays, and legal public holidays and notice of such delay shall be dispatched within the first ten days, excluding Saturdays, Sundays, and legal public holidays following the initial receipt of the request.

(d) Letters denying access to information will:

(1) Provide the requester with the reason for the denial.

(2) Inform the requester of his right to appeal the denial within 30 days.

(3) Give the name and title of the official to whom the appeal may be sent.

(4) Give the name and title of the official responsible for the denial.

§ 2105.4 Appeals.

(a) The Chairman of the Commission is the appellate authority for all denials.

(b) The Chairman will act upon the appeal within twenty days, excluding Saturdays, Sundays, and legal public holidays.

(c) In unusual circumstances, the time for action on an appeal may be extended by an additional ten days, excluding Saturdays, Sundays, and legal public holidays minus any extension granted at the initial request level under § 2105.3(c).

(d) In the event that the appeal upholds the denial, the requester will be advised that there are provisions for judicial review of such decisions under the Freedom of Information Act.

§ 2105.5 Fees.

(a) Fees shall be charged according to the schedule in paragraph (b) of this section for services rendered in responding to requests for Commission of Fine Arts records under this part unless determination is made that such charges or a portion of them are not in the public interest because furnishing the information primarily benefits the general public.

(b) The following charges will be assessed for the services listed:

(1) For copies of documents 8½″ × 14″ or smaller, $0.25 for the first copy of the first page and $0.10 for each copy of each page thereafter.

(i) Ordinarily, no more than one copy of each page will be supplied.

(ii) Ordinarily, photographs 8½″ × 14″ or smaller will be copied on a photocopy machine, rather than by photographing and printing of such photographs.

(2) When in responding to a request, copying of bound works such as books or periodicals, copying of documents larger than 8½″ × 14″, photographing and printing of records, or other services not normally performed by the Commission and its staff are required, the direct cost of such services or material to the Commission of Fine Arts

may be charged, but only if the requester has been notified of such cost before it is incurred.

(3) For each one quarter hour spent by clerical personnel in excess of the first quarter hour in searching for and producing a requested record, $1.50.

(4) When a search cannot be performed by clerical personnel and the amount of time that must be expended in the search and collection of the requested records by such higher level personnel is substantial, charges may be made at a rate in excess of the clerical rate, namely, for each one quarter hour spent in excess of the first quarter hour by such higher level personnel in searching for a requested record, $3.

(5) No charge will be made for time spent in resolving legal or policy issues affecting access to records of known contents. In addition, no charge will be made for the time involved in examining records in connection with determining whether they are exempt from mandatory disclosure and should be withheld, as a matter of sound policy. In addition, no charge will ordinarily be made if the records requested are not found. However, if the time expended in processing the request is substantial, and if the requester has been notified that it cannot be determined in advance whether any records will be made available, fees may be charged.

(c) Where it is anticipated that the fees chargeable under this section will amount to more than $10, and the requester has not indicated in advance his willingness to pay fees as high as are anticipated, the requester shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In such cases, a request will not be deemed to have been received until the requester is notified of the anticipated cost and agrees to bear it. Such a notification will be transmitted as soon as possible but in any event, within five days, excluding Saturdays, Sundays, and legal public holidays after the receipt of the initial request.

(d) Payment should be made by check or money order payable to the U.S. Treasury.

(e)(1) Where the anticipated fee chargeable under this section exceeds $10, an advance deposit of 25% of the anticipated fee or $10, whichever is greater may be required.

(2) Where a requester has previously failed to pay a fee under this section, an advance deposit of the full amount of the anticipated fee may be required.

PART 2106—RULES FOR COMPLIANCE WITH 5 U.S.C. 552a, THE PRIVACY ACT OF 1974

Sec.

AUTHORITY: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a(f)).

SOURCE: 40 FR 52369, Nov. 10, 1975. Redesignated and amended at 51 FR 23056, June 25, 1986, unless otherwise noted.

EDITORIAL NOTE: The regulations in this part 2106 were formerly codified in 36 CFR chapter X, part 1002.

§ 2106.1 Rules for determining if an individual is the subject of a record.

(a) Individuals desiring to know if a specific system of records maintained by the Commission of Fine Arts contains a record pertaining to them should address their inquiries to the Secretary, Commission of Fine Arts, 708 Jackson Place, NW., Washington, DC 20006. The written inquiry should contain a specific reference to the system of records maintained by CFA listed in the CFA Notices of Systems of Records or it should describe the type of record in sufficient detail to reasonably identify the system of records. Notice of CFA Systems of Records will be made in the FEDERAL REGISTER and copies of the notices will be available upon request to the Secretary when so published. A compilation of such notices will also be made and published by the Office of the Federal Register in accordance with section 5 U.S.C. 552a(f).

(b) At a minimum, the request should contain sufficient identifying information to allow CFA to determine if there is a record pertaining to the individual

making the request in a particular system of records. In instances where identification is insufficient to insure disclosure to the individual to whom the information pertains in view of the sensitivity of the information, CFA reserves the right to solicit from the requester additional identifying information.

(c) Ordinarily the requester will be informed whether the named system of records contains a record pertaining to the requester within 10 days of the receipt of such a request (excluding Saturdays, Sundays, and legal Federal holidays). Such a response will also contain or reference the procedures which must be followed by the individual making the request in order to gain access to the record.

(d) Whenever a response cannot be made within 10 days, the Secretary will inform the requester of the reasons for the delay and the date by which a response may be anticipated.

§ 2106.2 Requests for access.

(a) *Requirement for written requests.* Individuals desiring to gain access to a record pertaining to them in a system of records maintained by CFA must submit their request in writing in accordance with the procedures set forth in paragraph (b) of this section.

(b) *Procedures.* (1) Content of the request. The request for access to a record in a system of records shall be addressed to the Secretary, at the address cited above; and shall name the system of records or contain a description (as concise as possible) of such system of records. The request should state that the request is pursuant to the Privacy Act of 1974. In the absence of such a statement, if the request is for a record pertaining to the requester maintained by CFA in a system of records, the request will be presumed to be made under the Privacy Act of 1974. The requester should include any other information which may assist in the rapid identification of the record for which access is being requested (e.g., maiden name, dates of employment, etc.).

(2) Requirements for identification will normally be limited to the presentation of any standard picture and signature or signature identification card, such as driver's license, so that a comparison of the signature and the signature on the original request may be made. The appearing individual will be read paragraph (3), subsection (i) to title 5 U.S.C. 552a which specifies the penalty for knowingly or willfully requesting or obtaining a record concerning an individual from an agency under false pretenses and asked to sign a statement attesting to the fact that he or she understands the paragraph and that he or she is, in fact, the individual who made the request (or the individual authorized to receive the disclosure by the requesting individual). This signature will be compared with the other two. If the appearing individual is other than the requesting individual, then he or she must also present a letter of introduction signed by the requesting individual so that the comparison of signature may be made.

(c) *CFA action on request.* (1) A request for access will ordinarily be answered within 10 days (excluding Saturdays, Sundays, and legal Federal holidays), except when the Secretary determines otherwise, in which case the requester will be informed of the reason for the delay and an anticipated date by which the request will be answered. When the request can be answered within 10 days, it shall include the following:

(i) A statement that there is a record as requested or a statement that there is not a record in the system of records maintained by CFA;

(ii) A statement as to whether access will be granted only by providing a copy of the record through the mail; or the address of the location and the date and time at which the record may be examined. In the event the requester is unable to meet the specified date and time, alternate arrangements may be made with the official specified in paragraph (b)(1) of this section;

(iii) A statement, when appropriate, that examination in person will be the sole means of granting access only when the Secretary has determined that it would not unduly impede the requester's right of access;

(iv) The amount of fees charged, if any (see §§ 2106.4 and 2106.7); and

(v) The name, title, and telephone number of the CFR official having operational control over the record.

(A) *Access by the parent of a minor, or legal guardian.* A parent of a minor, upon presenting suitable personal identification, may access on behalf of the minor any record pertaining to the minor maintained by CFA in a system of records. A legal guardian may similarly act on behalf of an individual declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, upon the presentation of documents authorizing the legal guardian to so act; and upon suitable personal identification of the guardian.

(B) *Granting access when accompanied or represented by another individual.* When an individual requesting access to his or her record in a system of records maintained by CFA wishes to be accompanied or represented by another individual during the course of the examination of the record, the individual making the request shall submit to the official having operational control of the record a signed statement authorizing that person access to the record.

(C) *Access in response to congressional inquiries.* Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(vi) *Medical records.* The records in a system of records which are medical records shall be disclosed to the individual in such a manner and following such procedures as the Secretary shall direct. When CFA, in consultation with a physician, determines that the disclosure of medical information could have an adverse effect upon the individual to whom it pertains, CFA may transmit such information to a physician named by the individual.

(vii) *Exceptions.* Nothing in this section shall be construed to entitle an individual the right to access to any information compiled in reasonable anticipation of a civil action or proceeding.

[40 FR 52369, Nov. 10, 1975, as amended at 41 FR 2385, Jan. 16, 1976]

§2106.3 Access to the accounting of disclosures from records.

Rules governing the granting of access to the accounting of disclosures are the same as those for granting access to the records outlined in §2106.2 of this part.

§2106.4 Requests for copies of records.

Rules governing requests for copies of records are the same as those for the granting of access to the records outlined in §2106.2 of this part (see also §2106.7 for rules regarding fees).

§2106.5 Requests to amend records.

(a) *Requirements for written requests.* Individuals desiring to amend a record that pertains to them in a system of records maintained by CFA must submit their request in writing in accordance with the procedures set forth herein unless the requirement is waived by the official having responsibility for the system of records. Records not subject to the Privacy Act of 1974 will not be amended in accordance with these provisions; however, individuals who believe that such records are inaccurate may bring this to the attention of the CFA.

(b) *Procedures.* (1)(i) The request to amend a record in a system of records shall be addressed to the Secretary. Included in the request shall be the name of the system and a brief description of the record proposed for amendment. In the event the request to amend the record is the result of the individual's having gained access to the record as set forth above, copies of previous correspondence between the requester and CFA will serve in lieu of a separate description of the record.

(ii) Individuals desiring assistance in the preparation of a request to amend a record should contact the Secretary at the address cited above.

(iii) The exact portion of the record the individual seeks to have amended should be clearly indicated. If possible, the proposed alternative language should also be set forth, or, at a minimum, the facts which the individual believes are not accurate, relevant, timely, or complete, should be set forth with such particularity as to permit CFA not only to understand the individual's basis for the request, but also

to make an appropriate amendment to the record.

(iv) The request must also set forth the reasons why the individual believes his record is not accurate, relevant, timely, or complete. In order to avoid the retention by CFA of personal information merely to permit the verification of records, the burden of persuading CFA to amend a record will be upon the individual. The individual must furnish sufficient facts to persuade the official in charge of the system of the inaccuracy, irrelevancy, timeliness, or incompleteness of the record.

(2) *CFA action on the request.* To the extent possible, a decision upon a request to amend a record will be made within 10 days (excluding Saturdays, Sundays, and legal Federal holidays). In the event that a decision cannot be made within this time frame, the individual making the request will be informed within the 10 days of the expected date for a decision. The decision upon a request for amendment will include the following:

(i) The decision of the Commission of Fine Arts whether to grant in full, or deny any part of the request to amend the record;

(ii) The reasons for the determination for any part of the request which is denied;

(iii) The name and address of the official with whom an appeal of the denial may be lodged;

(iv) The name and address of the official designated to assist, as necessary, and upon the request of, the individual making the request in preparation of the appeal;

(v) A description of the review of the appeal within CFA (see § 2106.6); and

(vi) A description of any other procedures which may be required of the individual in order to process an appeal.

§ 2106.6 Request for review.

(a) Individuals wishing to request a review of the decision by CFA with regard to an initial request to amend a record in accordance with the provisions of § 2106.5 of this part, should submit the request for review in writing and, to the extent possible, include the information specified in paragraph (a) of this section. Individuals desiring assistance in the preparation of their request for review should contact the Secretary at the address provided herein.

(b) The request for review should contain a brief description of the record involved or in lieu thereof, copies of the correspondence from CFA in which the request to amend was denied and also the reasons why the requester believes that the disputed information should be amended. The request for review should make reference to the information furnished by the individual in support of his claim and the reasons as required by § 2106.5 of this part set forth by CFA in its decision denying the amendment. Appeals filed without a complete statement by the requester setting forth the reasons for the review will, of course, be processed. However, in order to make the appellate process as meaningful as possible, the requester's disagreement should be understandably set forth. In order to avoid the unnecessary retention of personal information, CFA reserves the right to dispose of the material concerning the request to amend a record if no request for review in accordance with this section is received by CFA within 180 days of the mailing by CFA of its decision upon an initial request. A request for review received after the 180–day period may, at the discretion of the Secretary, be treated as an initial request to amend a record.

(c) The request for review should be addressed to the Secretary.

(d) Upon receipt of a request for review, the Secretary will convene a review group composed of the Secretary and the Chairman. This group will review the basis for the requested review and will develop a recommended course of action to the office's Committee on Freedom of Information and Privacy (hereinafter referred to as the Committee). If at any time additional information is required from the requestee, the Secretary is authorized to acquire it or authorize its acquisition from the requester.

(e) The Committee is composed of:

(1) The Chairman;

(2) The Secretary;

(3) The Assistant Secretary;

(4) The Administrative Assistant.

(f) The Committee will review the request for review and the recommended

course of action and will recommend a decision on the request for review to the Chairman, who has the final authority regarding appeals.

(g) The Chairman will inform the requester in writing of the decision on the request for review within 30 days (excluding Saturdays, Sundays, and legal Federal holidays) from the date of receipt by CFA of the individual's request for review unless the Chairman extends the 30-day period for good cause. The extension of and the reasons therefor will be sent by CFA to the requester within the initial 30–day period. Included in the notice of a decision being reviewed, if the decision does not grant in full the request for review, will be a description of the steps the individual may take to obtain judicial review of such a decision, and a statement that the individual may file a concise statement with CFA setting forth the individual's reasons for his disagreement with the decision upon the request for review. The Secretary has the authority to determine the ''conciseness'' of the statement, taking into account the scope of the disagreement and the complexity of the issues. Upon the filing of a proper concise statement by the individual, any subsequent disclosure of the information in dispute will have the information in dispute clearly noted and a copy of the concise statement furnished, as well as a concise statement by CFA setting forth its reasons for not making the requested changes, if CFA chooses to file such a statement. A copy of the individual's statement, and, if it chooses, CFA's statement will be sent to any prior transferree of the disputed information who is listed on the accounting required by 5 U.S.C. 552a(c).

§2106.7 Schedule of fees.

No fees will be charged for search, review, or copies of the record.

CHAPTER XXII—CHRISTOPHER COLUMBUS QUINCENTENARY JUBILEE COMMISSION

PART 2201—RECOGNITION AND SUPPORT OF QUINCENTENARY PROJECTS

Subpart A—Commission Organization

Subpart B—Powers and Functions

Subpart C—General Provisions

Subpart D—Types of Quincentenary Involvement

Subpart E—Limitations

Subpart F—Christopher Columbus Quincentenary Logo

Subpart G—Procedure for Designation of Christopher Columbus Quincentenary Projects

AUTHORITY: Pub. L. 98–375, 98 Stat. 1257; as amended by Pub. L. 100—94, 101 Stat. 700.

SOURCE: 52 FR 10870, Apr. 3, 1987, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes affecting part 2201 were published at 53 FR 3320, Feb. 4, 1988.

Subpart A—Commission Organization

§ 2201.1 Authorization.

The Christopher Columbus Quincentenary Jubilee Commission was established by Pub. L. 98–375, 98 Stat. 1257. The members of the Commission were sworn into office on September 12, 1985 and the first meeting of the Commission was held on September 12, 1985.

§ 2201.2 The Commission.

(a) *Composition.* The Commission is composed of thirty members as follows:

(1) Seven members appointed by the President upon the recommendation of the majority leader of the Senate in consultation with the minority leader of the Senate;

(2) Seven members appointed by the President upon the recommendation of the Speaker of the House of Representatives in consultation with the minority leader of the House of Representatives;

(3) Ten members appointed by the President, which members shall be broadly representative of the people of the United States, and not otherwise officers or employees of the United States;

(4) The Secretary of State;

(5) The Archivist of the United States;

(6) The Librarian of Congress;

(7) The Chairman of the National Endowment for the Arts;

(8) The Chairman of the National Endowment for the Humanities;

(9) The Secretary of Commerce.

(b) *Service without compensation.* Members of the Commission serve without compensation as a member of the Commission except that members may be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

(c) *Vacancies.* A vacancy in the Commission shall be filled in the same manner in which the original appointment was made.

§ 2201.3 Report to the Congress.

Within two years after the first date of the first meeting of the Commission,

the Commission shall submit to Congress a comprehensive report incorporating its recommendations for the commemoration of the quincentennial of the voyages of discovery of Christopher Columbus.

§ 2201.4 Chairman and Vice Chairman.

Pursuant to the provisions of Pub. L. 98–375, sections 3(b)(3) and 3(d), the Commission shall elect a Chairman and Vice Chairman from among the members.

[53 FR 3320, Feb. 4, 1988]

Subpart B—Powers and Functions

SOURCE: 53 FR 3321, Feb. 4, 1988, unless otherwise noted.

§ 2201.11 Personnel.

(a) In carrying out the functions and responsibilities of the Commission:

(1) The Chairman, with the advice of the Commission, shall appoint a Director and a Deputy Director;

(2) The Commission may appoint and fix the compensation of such additional personnel to be paid out of appropriated funds to carry out the purposes of the Commission, not to exceed 20 staff members;

(3) The Commission may appoint and fix the compensation of additional personnel to be paid out of such other funds as may be available to it from donations, revenues or such other sources as are authorized by law;

(4) The Commission may request the head of any Federal agency to detail to the Commission, without reimbursement to the agency, such personnel as the Commission may require for carrying out its duties and functions.

(b) The Director has responsibility for administering the work of the Commission's staff under the oversight of the Chairman and the Commission.

§ 2201.12 Facilities and services.

(a) To accomplish its purposes, the Commission is authorized to procure supplies, services and property; make contracts; and expend in furtherance of its purposes funds appropriated, donated or received in pursuance of such contracts.

(b) The Commission may enter into agreements with the General Services Administration for procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman and the Administrator of the General Services Administration.

(c) The Commission may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States.

§ 2201.13 Donations to the Commission.

The Commission is authorized to accept, use, solicit, and dispose of donations of money, property or personal services, except that the Commission may not accept donations the aggregate value of which in any year exceed:

(a) $250,000 in the case of donations from an individual donor; and

(b) $1,000,000 in the case of donations from a foreign government, corporation, partnership, or other person (other than an individual).

Subpart C—General Provisions

§ 2201.21 Statement of policy.

(a) The Christopher Columbus Quincentenary Jubilee Commission was established by Pub. L. 98–375 to commemorate the 500th anniversary of the voyages of Christopher Columbus. The Commission will plan, encourage, coordinate and conduct activities commemorating the historic events associated with those voyages. Private and public organizations, as well as state and local governments, are encouraged to conduct activities to commemorate the Quincentenary.

(b) The Commission, recognizing its duty under the law to conduct and coordinate for an array of projects, sets forth these regulations for the registration, endorsement and support of projects. These regulations may be changed or amended by the Commission at any time and any such change or amendment will be published in the FEDERAL REGISTER.

[52 FR 10870, Apr. 3, 1987. Redesignated at 53 FR 3321, Feb. 4, 1988]

Subpart D—Types of Quincentenary Involvement

SOURCE: 52 FR 10870, Apr. 3, 1987, unless otherwise noted. Redesignated at 53 FR 3321, Feb. 4, 1988.

§ 2201.31 Types of projects.

Subject to the limitations set forth in this and other sections of these guidelines, there shall be two forms of Commission involvement with projects: Registered Projects and Christopher Columbus Quincentenary Projects.

§ 2201.32 Registered projects.

(a) The Commission, at its discretion, may include a project in a Register of Quincentenary Projects and Events.

(b) Registered projects are defined as those which

(1) Will increase public awareness of the Quincentenary; and,

(2) Meet such other criteria as may be established by the Commission or the agencies or organizations defined in paragraph (c) of this section.

(c) Those interested in requesting that a project be included in the Commission's Register of Quincentenary Projects and Events should make such request in writing to the Commission. The request must include a description of the project, including its time, location and scope, and indicate how it is expected the project will contribute to increasing public awareness of the Quincentenary. The request must also include the signature of the person to be contacted by the Commission regarding the project and identify any individuals, institutions, entities, groups or organizations on whose behalf the signer has been authorized to make the request. Any project which is adequate for inclusion in the Register of Quincentenary Projects and Events may be proposed for registration as a registered project by one of the following:

(1) Any state quincentenary commission or comparable authority established under the laws of a state, territory or the District of Columbia;

(2) The officially constituted quincentenary commissions of Italy, Spain or other countries or governments recognized by the United States.

(d) The Commission reserves the right to decline to include a project in the Register of Quincentenary Projects and Events.

(e) The Commission reserves the right to participate in the development and implementation of registered projects, although primary responsibility for the project will rest with the project's sponsor or sponsors.

(f) Registered projects shall receive a Certificate of Registration from the Commission and a letter of agreement detailing the extent of Commission participation in the project.

(g) Registered projects are expressly enjoined from identifying themselves with the Commission unless expressly authorized to do so in writing by the Commission. Registration with the Commission does not authorize the use of the Christopher Columbus Quincentenary Logo for any purpose by the project or any of its sponsors.

[52 FR 10870, Apr. 3, 1987. Redesignated and amended at 53 FR 3321, Feb. 4, 1988]

EDITORIAL NOTE: In § 2201.32, paragraph (c) introductory text was revised at 53 FR 3321, Feb. 4, 1988. Information collection requirements that were contained in paragraph (c) will become effective upon Federal Register publication of a document by the agency.

§ 2201.33 Christopher Columbus Quincentenary Projects.

(a) A project which is presented to the Commission or originated by the Commission, its members or staff, and which the Commission, after careful review and consultation with appropriate entities, determines that such project furthers the mandate of the law in accordance with section 4(b), and the criteria set forth in this section, shall be designated as an ''Christopher Columbus Quincentenary Project.''

(b) Christopher Columbus Quincentenary Projects shall be those which, upon the determination of the Commission,

(1) Will make an exceptional contribution to the commemoration of the voyages of Columbus,

(2) Will have substantial educational, historical and cultural value in relation to the Quincentenary,

(3) Will substantially increase public awareness of the Quincentenary,

(4) Will be adequately financed and directed, and

(5) Will be accomplished without unreasonable cost to the Commission.

(c) The Commission reserves the right to participate in the development and implementation of Christopher Columbus Quincentenary Projects although primary responsibility for the project shall rest with the project's sponsor or sponsors.

(d) Christopher Columbus Quincentenary Projects shall receive a Certificate stating that the project has been designated as such and a letter of agreement stating the extent of Commission participation in the project.

Subpart E—Limitations

SOURCE: 52 FR 10870, Apr. 3, 1987, unless otherwise noted. Redesignated at 53 FR 3321, Feb. 4, 1988.

§ 2201.41 Withdrawal of involvement.

The Commission reserves the right at all times, upon timely and appropriate notice, and with respect to any project to withdraw its involvement, including authorization for the use of the logo.

§ 2201.42 Publicity.

The Commission shall determine the manner in which the Commission's involvement in a project shall be made public.

§ 2201.43 Nonexclusive involvement.

Unless otherwise indicated by the Commission in advance and in writing, Commission involvement with a project will not in any way limit the Commission from involving itself in other projects of the same or similar nature.

Subpart F—Christopher Columbus Quincentenary Logo

SOURCE: 52 FR 10870, Apr. 3, 1987, unless otherwise noted. Redesignated at 53 FR 3320, Feb. 4, 1988.

§ 2201.51 Design and notification of certification.

Under the authority granted by Pub. L. 98–375, section 10a, the Commission has designed and adopted a logo as the official symbol of the Quincentenary. This design is depicted and described in Appendix A to this part of the Commission's regulations. The logo is hereby designated by the Commission as the Christopher Columbus Quincentenary Logo and this designation includes any likeness of the logo which, in whole or in part, is used in such manner as to suggest the Christopher Columbus Quincentenary Logo.

§ 2201.52 Authorized use of logo.

The Commission reserves full authority over its logo and permission to use the logo shall be granted only by written authorization by the Commission.

§ 2201.53 Commercial use of Logo.

Pub. L. 100–94 authorizes the Commission to make or permit commercial use of its Logo. The Commission reserves full authority over its Logo and permission for such commercial use shall be granted only by written authorization from the Commission and subject to these regulations governing commercial use of the Logo and any subsequent amendments thereto as may be promulgated by the Commission.

[53 FR 3320, Feb. 4, 1988]

§ 2201.54 Penalties for unauthorized use.

The use of such logo, symbol or mark, unless otherwise authorized by the Commission, constitute a violation punishable under Pub. L. 98–375, section 10(b).

Subpart G—Procedure for Designation of Christopher Columbus Quincentenary Projects

SOURCE: 52 FR 10870, Apr. 3, 1988, unless otherwise noted. Redesignated at 53 FR 3320, Feb. 4, 1988.

§ 2201.61 Submission of proposals.

Proposals for projects to be designated as Christopher Columbus Quincentenary Projects may be submitted to the Commission from corporations, organizations, foundations, government agencies, and individuals.

§ 2201.62 Requirements.

(a) Each proposal submitted to the Commission shall include:

(1) A brief, typewritten summary of the proposal in English, which shall include a narrative statement indicating how the project meets the criteria established by the Commission;

(2) The name, address, and telephone number of the project director, the date of the application, the name and address of the person or persons responsible for the operation and implementation of the project, and the type of endorsement sought from the Commission;

(3) A comprehensive description of the project;

(4) The names and addresses of all persons or organizations proposing, sponsoring and funding the project;

(5) The total actual and estimated cost of the project, the total amount of funds available (excluding funds committed but not yet received), the names of government agencies and programs from which funds have been received, the source for funds not yet received and a short description of the financial accounting employed for the project;

(6) A statement to the effect that the proponent agrees to be bound by all policies, requirements, regulations and other decisions that have been made or will be made by the Commission affecting the project and those responsible for it; and,

(7) The signature of the person or persons responsible for the project and the project director.

(b) All materials submitted to the Commission shall become the property of the Commission.

(c) All materials shall be delivered personally or by mail, return receipt requested, to the office of the Commission at 1801 F Street, NW., Third Floor, Washington, DC 20006 or to its designated address.

(d) Although not required, it will be helpful to the Commission to receive one (1) original and two (2) copies of all materials included in a proposal submitted to the Commission.

(Approved by the Office of Management and Budget under control number 3312–0016.)

[52 FR 10870, Apr. 3, 1987, as amended at 53 FR 3321, Feb. 4, 1988]

§ 2201.63 Review.

(a) The Commission staff will perform an initial, procedural review of all proposals submitted to the Commission.

(b) After the initial procedural review by the staff, the staff shall refer the proposed project to the appropriate committees of the Commission which shall submit their recommendations to the Commission for final action. The Commission shall determine the manner in which proposals shall be reviewed.

(c) Unless delegated by vote of the Commission to the Director of the Commission, final authority to decide Commission involvement with the projects remains with the full Commission.

(d) All communication to and from the Commission regarding a project shall be made through the project director designated in the proposal.

§ 2201.64 Confidentiality.

Although the Commission cannot guarantee confidentiality in its review of proposals, the Commission will make every possible effort to maintain the confidentiality of those proposals for projects which, in their summary, request confidentiality.

§ 2201.65 Notification.

The Commission will notify the project director, in writing, the determination concerning an award for endorsement. The Commission may issue a letter of encouragement when a project demonstrates merit but has not obtained Commission approval as an Christopher Columbus Quincentenary Project. The Commission shall also issue a brief letter of explanation when a project is denied endorsement.

APPENDIX A TO PART 2201—CHRISTOPHER COLUMBUS QUINCENTENARY LOGO

This Appendix is intended to improve the quality of part 2201 by setting forth a description and depiction of the Christopher Columbus Quincentenary Logo by the Christopher Columbus Quincentenary Jubilee Commission. The Logo is the subject of subpart E, §§ 2201.41 through 2201.44, and it is referred to repeatedly thereafter. This Appendix contains no requirements or restrictions which are not already in the regulations.

Description: The Logo consists of the number ''500'' in outline form, as represented in the illustration below accompanied by the legend ''Christopher Columbus Quincentenary Jubilee.'' In color, the Logo is intended to appear on a white field. The number ''five'' is in red, the first zero and center cross design are in green, the second zero and center star design are in blue. The words ''Christopher Columbus'' appear above the numbers in gray and the words ''Quincentenary Jubilee'' appear under the numbers in gray. When printed in color, the following PMS color designations must be used: Red PMS 485; Green PMS 355; Blue PMS 285 and Gray PMS 424. The Logo may also be duplicated wholly in black on a white or light-colored field or in white on a black field.

PART 2202—RECOGNITION OF COMMERCIAL QUINCENTENARY ACTIVITIES

Subpart A—General Policy on Commercial Involvement

Subpart B—Involvement With Commercial Activities

Subpart C—Christopher Columbus Quincentenary Logo

AUTHORITY: Pub. L. 98–375, 98 Stat. 1257; as amended by Pub. L. 100–94, 101 Stat. 700.

SOURCE: 53 FR 3322, Feb. 4, 1988, unless otherwise noted.

Subpart A—General Policy on Commercial Involvement

§ 2202.11 Statement of policy.

(a) The Commission is authorized to accept, use, solicit and dispose of donations of mon, property or personal services from commercial entities, groups or organizations as well as individuals, or from other, non-commercial sources. In addition, the Commission seeks to encourage participation in and support for its commemorative program by commercial entities, groups and organizations. In determining whether and how to associate itself with activities conducted, sponsored or organized by commercial entities, groups and organizations or with any commercial activities of non-profit, charitable, public, educational, scholarly, governmental or other entities, groups and organizations not primarily or exclusively commercial in nature or purpose, the Commission shall give due consideration to the following:

(1) The extent to which involvement will serve to further the overall goals of the Commission's commemorative program;

(2) The appropriateness, as determined by the Commission, of any products, goods or services which may be identified with the Commission or its

commemorative program through use of the Logo or other means;

(3) Whether identification or involvement with a particular commercial activity, product or organization is, in the Commission's judgment, in the best interests of the Commission and its commemorative program and goals;

(4) To the extent possible, the existence of any historical or other links between specific commercial activities, groups or organizations and the voyages or related personalities, events and activities which are the subject of the Commission's commemorative program;

(5) The extent to which the Commission's involvement with a particular commercial activity, group or organization will serve to promote public awareness of its commemorative program or educational and cultural activities planned and conducted in connection with the program; and

(6) The public benefit or interest served by involvement with a particular commercial activity, group or organization.

(b) The general criteria or considerations in paragraph (a) of this section are not exclusive or mandatory. The Commission's decisions whether or not to become involved with a particular commercial activity, entity, group or organization, are, subject to any limitations imposed by law, within the sole discretion of the Commission.

(c) The promulgation by the Commission of regulations governing its involvement with commercial activities shall not be construed as limiting or affecting the Commission's rights and authority with respect to non-commercial involvement.

§ 2202.12 Financial support.

Commission involvement with commercial activities, projects, entities, groups or organizations shall not obligate the Commission to provide financial support to any such activity, project, entity, group or organization.

§ 2202.13 Nonexclusive involvement.

Unless otherwise agreed to by the Commission or its designee for such purposes in advance and in writing, Commission involvement with any commercial activity, project, entity, group or organization will not in any way limit the Commission from involvement with other activities, projects, entities, groups or organizations of the same or a similar nature.

§ 2202.14 Definition.

(a) For purposes of these regulations, the general term *commercial* is normally understood to mean private, for profit activity and the individuals, entities, groups or organizations engaged in such activity.

(b) Nothing in this definition shall, however, be interpreted as precluding the Commission from permitting, granting, authorizing or licensing commercial and/or non-commercial use of its Logo by non-profit, non-commercial entities, groups or organizations; educational facilities or institutions; individuals, groups, institutions or organizations engaged in scholarly research; charitable or cultural groups or organizations; and local, state and federal government(s) or instrumentalities thereof.

Subpart B—Involvement With Commercial Activities

§ 2202.21 Commission decisions.

Unless delegated by vote of the Commission to a committee of the Commission, or to the Commission's Director, authority to decide Commission involvement with commercial activities remains with the full Commission. The Commission shall give notice in writing with respect to decisions regarding commercial involvement.

§ 2202.22 Withdrawal of involvement.

The Commission reserves the right at all times and with respect to any involvement with commercial activity to withdraw its involvement or recognition, or both, including any authorization for use of the Logo.

§ 2202.23 Types of involvement.

Initially, the Commission contemplates there will be three forms of involvement with commercial activities:

(a) *Recognition of sponsorship.* In return for donations offered or solicited

from commercial sources, the Commission may, on its own initiative, or upon request, recognize the contributions of specific donors by entering the name of such donors on a Register of Official Sponsors to be maintained at the Commission's offices. The Commission may also authorize a donor listed in the Register to identify itself to the general public as an ''Official Sponsor of the Christopher Columbus Quincentenary Jubilee.'' Any conditions under which a donor may be permitted to identify itself to the general public as such an official sponsor shall be prescribed in writing by the Commission.

(b) *Recognized commercially sponsored projects.* As set forth in Part 2201 of the Commission's regulations, the Commission may designate projects originated by commercial sources as Official Quincentenary Projects. In connection with such inclusion or designation, the Commission may authorize a commercial sponsor or sponsors to identify themselves with the project or the Commission and/or to make use of the Logo. The conditions under which commercial sponsors of ''Registered'' or ''Official'' projects or events may be permitted to identify themselves with the project or the Commission and/or make use of the Logo shall be prescribed in writing by the Commission.

(c) *Licensing.* Subject to the requirements of applicable law, these regulations and any amendments thereto as may subsequently be required, the Commission may enter into agreements by which it will license commercial use of its Logo.

Subpart C—Christopher Columbus Quincentenary Logo

§ 2202.31 Design and identification.

Under the authority granted by Pub. L. 98–375, Sec. 10a, as amended, the Commission has designed and adopted the ''Christopher Columbus Quincentenary Logo'' as the official symbol or mark of the Quincentenary. This design has been depicted and described in Appendix A to part 2201 of this chapter. Commercial use of the Logo, including any likeness of this Logo which, in whole or in part, is used in such manner as to suggest this Logo, shall be governed by these regulations.

§ 2202.32 Authorized commercial use of Logo.

Authorization for commercial use of the Christopher Columbus Quincentenary Logo (hereinafter the ''Logo'') shall be granted only at the sole discretion of the Commission and in accord with these regulations. Reproduction of the Logo is permitted only after written authorization of the Commission. Unless expressly authorized otherwise in writing by the Commission, authority to reproduce the Logo shall entail the obligation to reproduce it in its entirety, that is including both the number ''500'' in outline form as represented in the illustration in Appendix A to part 2201 of this chapter and the complete accompanying legend above and below the numerical symbol, also according to the specifications set forth in Appendix A. Authorized users may not delegate use of the Logo to others unless authorized to do so in writing by the Commission or by these regulations.

§ 2202.33 Commercial use.

Public Law 100–94, Sec. 7(a), empowers the Commission, in accordance with these rules and regulations, and such other rules and regulations which the Commission may from time to time prescribe, to authorize the manufacture, reproduction, use, sale or distribution of the Logo. To this end, the Commission shall establish a licensing program to govern its authorization of commercial use of the Logo in connection with the production or manufacture of any commercial goods, as part of an advertisement promoting commercial goods or services, or as part of an endorsement of such goods and services. The Commission reserves the right to solicit individuals, entities, groups or organizations regarding entry into licensing or commercial use authorization agreements.

§ 2202.34 Licensed usage.

(a) In general, licensed commercial usage of the Logo shall not involve any official endorsement of products. The purpose of licensing will be to authorize use of the Logo through a license

agreement for its use in product design or packaging or in promotional activities or materials conducted or produced by the licensee.

(b) At a minimum, authorized use of the Logo shall be governed by these regulations, with any additional, specific terms of and conditions upon such authorized use to be determined by the specific license agreement between the Commission and the authorized user.

§ 2202.35 Licenses—Proposals, Committee on Licensing.

(a) The Commission may delegate authority to a committee on product licensing, to be organized and staffed as the Commission determines. The Commission reserves the right to publish any additional guidelines that may be necessary to carry out activities and functions related to licensing.

(b) The Commission may delegate its authority to accept, consider, review and solicit proposals for licenses and to decide whether to enter into licensing agreements with those seeking or interested in such agreements as well as all other responsibilities and functions necessary to carry out a licensing program, including negotiating the terms of licensing agreements.

(c) The Commission invites prospective licensees to submit proposals for license agreements. Each proposal for entering into a licensing agreement shall be addressed to the Christopher Columbus Quincentenary Jubilee Commission at 1801 F Street NW., Third Floor, Washington, DC 20006. Each proposal shall be accompanied by a summary or synopsis, not exceeding two single-spaced, typewritten pages in length, which shall include:

(1) The name, address and telephone number of the proposer; the date of the application and the name, address and telephone number of the person or persons responsible for negotiating and administering any license agreement on behalf of the proposer;

(2) A brief description of the product or use for which the license is sought;

(3) A summary of proposed terms of any licensing agreement;

(4) A statement to the effect that the party submitting the proposal agrees to be bound by all policies, requirements, regulations or other decisions that have been made or will be made by the Commission affecting any license agreement between the Commission and the submitting party;

(5) A brief description of the financial accounting that will be employed by the party submitting the proposal with respect to any royalty or fee obligations to the Commission in connection with the license;

(6) A designation, in the synopsis, of any business confidential or proprietary information or materials contained in the proposal, and a request that it be treated as such;

(7) The signature(s) of the person or persons authorized to make a proposal on behalf of the individual, entity, group or organization submitting the proposal.

(d) The proposal accompanying the synopsis shall also include the information required in paragraphs (c)(1) through (7) of this section and shall, as appropriate or necessary, provide more comprehensive or detailed descriptions, information or data. The Commission reserves the right to request such additional information from a party submitting a proposal as it may deem necessary.

(e) The Commission shall not be responsible for any materials that are not delivered personally or by certified mail, return receipt requested, to the address indicated above or to any other designated address.

(f) Although the Commission cannot guarantee confidentiality in its review of proposals, the Commission will make every possible effort to maintain the confidentiality of those proposals for projects which, in their synopsis, request confidentiality.

EDITORIAL NOTE: Section 2202.35 was added at 53 FR 3322, Feb. 4, 1988. The public is not required to comply with the collection of information requirements contained in paragraph (c) of this section until approved by OMB. A notice will be published in the Federal Register when approval is obtained.

§ 2202.36 Fees and royalties.

(a) Public Law 100–94, Sec. 7(a)(3), authorizes the Commission to charge fees for any authorization of commercial use of its Logo. In general, the amount of any fee, royalty or other payment to

be charged by the Commission in return for a license or authorization to make commercial use of the Logo shall be established by agreement between the parties.

(b) A non-refundable advance against future royalties will normally be required from the licensee.

(c) The Commission may, in its sole discretion, determine the circumstances under which it may choose to waive payment of fees, royalties or other charges for commercial use of the Logo.

§ 2202.37 Revocation.

The Commission reserves the right at all times and with respect to any license or authorization of commercial use of the Logo to withdraw, revoke or otherwise terminate such license or authorization.

§ 2202.38 Termination.

(a) Commercial use licenses for products will expire on the statutory termination date of the Commission with no residual rights to the manufacturer. Products manufactured on or before the termination date may be sold after such date subject to payment of applicable royalties to the Comnission or its successor authorized to receive such payments.

(b) Notwithstanding the provisions of paragraph (a) of this section, the Commission may by agreement permit non-profit, non-commercial entities, groups or organizations, or individuals, as defined in § 2202.14 of these regulations, to continue to identify themselves with the Quincentenary and/or to make non-commercial use of the Logo in connection with ongoing educational, cultural or scholarly activities or projects undertaken with the Commission's sponsorship, approval or recognition.

§ 2202.39 Place of manufacture and quality.

To the extent possible in light of the special international scope and character of the Quincentenary, products licensed by the Commission under these regulations must be made in the United States of America, its territories and possessions within the meaning of Federal Trade Commission ''made in USA'' designation guidelines. Any exceptions to this policy must be approved by the Commission or its designee for product licensing.

§ 2202.40 Excluded products.

As implied under Pub. L. 98–375, as amended, the Commission or its designee for such purposes has the discretion to exclude product areas from the licensing program. Any decision to exclude a product or product area from the licensing program shall be in writing and shall include a brief statement of the reason or reasons for such exclusion.

CHAPTER XXIII—ARCTIC RESEARCH COMMISSION

PART 2301—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE UNITED STATES ARCTIC RESEARCH COMMISSION

AUTHORITY: 29 U.S.C. 794.

SOURCE: 58 FR 57698, 57699, Oct. 26, 1993, unless otherwise noted.

§ 2301.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 2301.102 Application.

This part (§§ 2301.101—2301.170) applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 2301.103 Definitions.

For purposes of this part, the term—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TTD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term ''physical or mental impairment'' includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, HIV disease (whether symptomatic or asymptomatic), and drug addiction and alcoholism.

(2) *Major life activities* include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

Qualified individual with handicaps means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, an individual with handicaps who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency;

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) *Qualified handicapped person* as that term is defined for purposes of employment in 29 CFR 1614.203(a)(6), which is made applicable to this part by § 2301.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended. As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 2301.104—2301.109 [Reserved]

§ 2301.110 Self-evaluation.

(a) The agency shall, by November 28, 1994, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the

self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 2301.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this part.

§§ 2301.112—2301.129 [Reserved]

§ 2301.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in according equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards;

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are no separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified

individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§2301.131—2301.139 [Reserved]

§2301.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1614, shall apply to employment in federally conducted programs or activities.

§§2301.141—2301.148 [Reserved]

§2301.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in §2301.150, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§2301.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §2301.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings,

shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of §2301.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to an historic property is not required because of §2301.150(a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by January 24, 1994, except that where structural changes in facilities are undertaken, such changes shall be made by November 26, 1996, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by May 26, 1994, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§2301.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§2301.152—2301.159 [Reserved]

§2301.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices

for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §2301.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§2301.161—2301.169 [Reserved]

§2301.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1614 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Executive Director shall be responsible for coordinating implementation of this section. Complaints may be sent to Executive Director, United States Arctic Research Commission, ICC Building, room 6333, 12th & Constitution Avenue, NW., Washington, DC 20423.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by §2301.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[58 FR 57698, 57699, Oct. 26, 1993]

§§ 2301.171—2301.999 [Reserved]

CHAPTER XXIV—JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

Part 2400—Fellowship Program Requirements

Subpart A—General

Subpart B—Application

Subpart C—Application Process

Subpart D—Selection of Fellows

Subpart E—Graduate Study

Subpart F—Fellowship Stipend

Subpart G—Special Conditions

AUTHORITY: 20 U.S.C. 4501 et. seq.

SOURCE: 61 FR 46734, Sept. 5, 1996, unless otherwise noted.

Subpart A—General

§ 2400.1 Purposes.

(a) The purposes of the James Madison Memorial Fellowship Program are to:

(1) Provide incentives for master's degree level graduate study of the history, principles, and development of the United States Constitution by outstanding in-service teachers of American history, American government, social studies, and political science in grades 7–12 and by outstanding college graduates who plan to become teachers of the same subjects; and

(2) Strengthen teaching in the nation's secondary schools about the principles, framing, ratification, and subsequent history of the United States Constitution.

(b) The Foundation may from time to time operate its own programs and undertake other closely-related activities to fulfill these goals.

§ 2400.2 Annual competition.

To achieve its principal purposes, the Foundation holds an annual national competition to select teachers in grades 7–12, college seniors, and college graduates to be James Madison Fellows.

§ 2400.3 Eligibility.

Individuals eligible to apply for and hold James Madison Fellowships are United States citizens, United States nationals, or permanent residents of the Northern Mariana Islands who are:

(a) Teachers of American history, American government, social studies, or political science in grades 7–12 who:

(1) Are teaching full time during the year in which they apply for a fellowship;

(2) Are under contract, or can provide evidence of being under prospective contract, to teach full time as teachers of American history, American government, social studies, or political science in grades 7–12;

(3) Have demonstrated records of willingness to devote themselves to

civic responsibilities and to professional and collegial activities within their schools and school districts;

(4) Are highly recommended by their department heads, school heads, school district superintendents, or other supervisors;

(5) Qualify for admission with graduate standing at accredited universities of their choice that offer master's degree programs allowing at least 12 semester hours or their equivalent of study of the origins, principles, and development of the Constitution of the United States and of its comparison with the constitutions of other forms of government;

(6) Are able to complete their proposed courses of graduate study within five calendar years from the commencement of study under their fellowships, normally through part-time study during summers or in evening or weekend programs;

(7) Agree to attend the Foundation's four-week Summer Institute on the Constitution, normally during the summer following the commencement of study under their fellowships; and

(8) Sign agreements that, after completing the education for which the fellowship is awarded, they will teach American history, American government, social studies, or political science full time in secondary schools for a period of not less than one year for each full academic year of study for which assistance was received, preferably in the state listed as their legal residence at the time of their fellowship award. For the purposes of this provision, a full academic year of study is the number of credit hours determined by each university at which Fellows are studying as constituting a full year of study at that university. Fellows' teaching obligations will be figured at full academic years of study; and when Fellows have studies for partial academic years, those years will be rounded upward to the nearest one-half year to determine Fellows' total teaching obligations.

(b) Those who aspire to become full-time teachers of American history, American government, social studies, or political science in grades 7–12 who:

(1) Are matriculated college seniors pursuing their baccalaureate degrees full time and will receive those degrees no later than August 31st of the year of the fellowship competition in which they apply or prior recipients of baccalaureate degrees;

(2) Plan to begin graduate study on a full-time basis;

(3) Have demonstrated records of willingness to devote themselves to civic responsibilities;

(4) Are highly recommended by faculty members, deans, or other persons familiar with their potential for graduate study of American history and government and with their serious intention to enter the teaching profession as secondary school teachers of American history, American government, social studies, or political science in grades 7–12;

(5) Qualify for admission with graduate standing at accredited universities of their choice that offer master's degree programs that allow at least 12 semester hours or their equivalent of study of the origins, principles, and development of the Constitution of the United States and of its comparison with the constitutions and history of other forms of government;

(6) Are able to complete their proposed courses of graduate study in no more than two calendar years from the commencement of study under their fellowships, normally through full-time study;

(7) Agree to attend the Foundation's four-week Summer Institute on the Constitution, normally during the summer following the commencement of study under their fellowships; and

(8) Sign an agreement that, after completing the education for which the fellowship is awarded, they will teach American history, American government, social studies, or political science full time in secondary schools for a period of not less than one year for each full academic year of study for which assistance was received, preferably in the state listed as their legal residence at the time of their fellowship award. For the purposes of this provision, a full academic year of study is the number of credit hours determined by each university at which Fellows are studying as constituting a full

year of study at that university. Fellows' teaching obligations will be figured at full academic years of study; and when Fellows have studies for partial academic years, those years will be rounded upward to the nearest one-half year to determine Fellows' total teaching obligations.

§ 2400.4 Definitions.

As used in this part:

Academic year means the period of time in which a full-time student would normally complete two semesters, two trimesters, three quarters, or their equivalent of study.

Act means the James Madison Memorial Fellowship Act.

College means an institution of higher education offering only a baccalaureate degree or the undergraduate division of a university in which a student is pursuing a baccalaureate degree.

Credit Hour Equivalent means the number of graduate credit hours obtained in credits, courses or units during a quarter, a trimester, or a semester which are needed to equal a specific number of semester graduate credit hours.

Fee means a typical and usually nonrefundable charge levied by an institution of higher education for a service, privilege, or use of property which is *required* for a Fellow's enrollment and registration.

Fellow means a recipient of a fellowship from the Foundation.

Fellowship means an award, called a James Madison Fellowship, made to a person by the Foundation for graduate study.

Foundation means the James Madison Memorial Fellowship Foundation.

Full-time study means study for an enrolled student who is carrying a full-time academic workload as determined by the institution under a standard applicable to all students enrolled in a particular educational program.

Graduate study means the courses of study beyond the baccalaureate level, which are offered as part of a university's master's degree program and which lead to a master's degree.

Incomplete means a course which the Foundation has paid for but the Fellow has received an incomplete grade or the Fellow has not received graduate credit for the course.

Institution of higher education has the meaning given in Section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

Junior Fellowship means a James Madison Fellowship granted either to a college senior or to a college graduate who has received a baccalaureate degree and who seeks to become a secondary school teacher of American history, American government, social studies, or political science for full-time graduate study toward a master's degree whose course of study emphasizes the framing, principles, history, and interpretation of the United States Constitution.

Master's degree means the first predoctoral graduate degree offered by a university beyond the baccalaureate degree, for which the baccalaureate degree is a prerequisite.

Matriculated means formally enrolled in a master's degree program in a university.

Repayment means if the fellowship is relinquished by the fellow or is terminated by the Foundation prior to the completion of the Fellow's degree, and/or the Fellow fails to fulfill the teaching obligation after the graduate degree is awarded, the Fellow must repay to the Foundation all Fellowship costs received plus interest at a rate of 6% per annum and, if applicable, reasonable collection fees.

Resident means a person who has legal residence in the state, recognized under state law. If a question arises concerning a Fellow's state of residence, the Foundation determines, for the purposes of this program, of which state the person is a resident, taking into account the Fellow's place of registration to vote, his or her parent's place of residence, and the Fellow's eligibility for in-state tuition rates at public institutions of higher education.

Satisfactory progress for a Junior Fellow means the completion of the number of required courses normally expected of full-time master's degree candidates at the university that the Fellow attends, with grades acceptable to that university, in not more than two calendar years from the commencement of that study. Satisfactory

progress for a Senior Fellow means the completion each year of a specific number of required courses in the Fellow's master's degree program, as agreed upon each year with the Foundation and outlined on the Plan of Study form, with grades acceptable to the Fellow's university, in not more than five calendar years from the commencement of that study.

Secondary school means grades 7 through 12.

Senior means a student at the academic level recognized by an institution of higher education as being the last year of study before receiving the baccalaureate degree.

Senior Fellowship means a James Madison Fellowship granted to a secondary school teacher of American history, American government, social studies, or political science for part-time graduate study toward a master's degree whose course of study emphasizes the framing, principles, history, and interpretation of the United States Constitution.

State means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and, considered as a single entity, Guam, the United States Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and, until adoption of its Compact of Free Association, the Republic of Palau.

Stipend means the amount paid by the Foundation to a Fellow or on his or her behalf to pay the allowable costs of graduate study which have been approved under the fellowship.

Teaching Obligation means that a Fellow, upon receiving a master's degree, must teach American history, American government, social studies, or political science on a full-time basis to students in secondary school for a period of not less than one year for each year for which financial assistance was received.

Term means the period—semester, trimester, or quarter—used by an institution of higher education to divide its academic year.

Termination means the non-voluntary ending of a fellowship by the Foundation when the Fellow has not complied with the rules and regulations of the fellowship or has not made satisfactory progress in his or her program of study.

University means an institution of higher education that offers post-baccalaureate degrees.

Withdrawal means the voluntary relinquishment or surrender of a Fellowship by the Fellow.

Subpart B—Application

§ 2400.10 Application.

Eligible applicants for fellowships must apply directly to the Foundation.

§ 2400.11 Faculty Representatives.

Each college and university that chooses to do so may annually appoint or reappoint a faculty representative who will be asked to identify and recruit fellowship applicants on campus, publicize the annual competition on campus, and otherwise assist eligible candidates in preparation for applying. In order to elicit the appointment of faculty representatives, the Foundation will each year request the head of each college and university campus to appoint or reappoint a faculty representative and to provide the Foundation with the name, business address, and business telephone number of a member of its faculty representative on forms provided for that purpose.

Subpart C—Application Process

§ 2400.20 Preparation of application.

Applications, on forms mailed directly by the Foundation to those who request applications, must be completed by all fellowship candidates in order that they be considered for an award.

§ 2400.21 Contents of application.

Applications must include for

(a) Senior Fellowships:

(1) Supporting information which affirms an applicant's wish to be considered for a fellowship; provides information about his or her background, interests, goals, and the school in which he or she teaches; and includes a statement about the applicant's educational plans and specifies how those plans will

enhance his or her career as a secondary school teacher of American history, American government, social studies, or political science;

(2) An essay of up to 600 words that explains the importance of the study of the Constitution to:

(i) Young students;

(ii) The applicant's career aspirations and his or her contributions to public service; and

(iii) Citizenship generally in a constitutional republic;

(3) The applicant's proposed course of graduate study, including the name of the degree to be sought, the required courses to be taken, as well as information about the specific degree sought;

(4) Three evaluations, one from an immediate supervisor, that attest to the applicant's strengths and abilities as a teacher in grades 7–12; and

(5) A copy of his or her academic transcript.

(b) Junior Fellowships:

(1) Supporting information which affirms an applicant's wish to be considered for a fellowship; provides information about the applicant's background, interests, goals, and the college which he or she attends or attended; and includes a statement about the applicant's educational plans and specifies how those plans will lead to a career as a teacher of American history, American government, social studies, or political science in grades 7–12;

(2) An essay of up to 600 words that explains the importance of the study of the Constitution to:

(i) Young students;

(ii) The applicant's career aspirations and his or her contribution to public service; and

(iii) Citizenship generally in a constitutional republic;

(3) Applicant's proposed course of graduate study, including the name of the degree sought, the name of the required courses to be taken, and information about the specific degree sought;

(4) Three evaluations that attest to the applicant's academic achievements and to his or her potential to become an outstanding secondary school teacher; and

(5) A copy of his or her academic transcript.

§ 2400.22 Application deadline.

Completed applications must be received by the Foundation no later than March 1st of each year preceding the start of the academic year for which candidates are applying.

Subpart D—Selection of Fellows

§ 2400.30 Selection criteria.

Applicants will be evaluated, on the basis of materials in their applications, as follows:

(a) Demonstrated commitment to teaching American history, American government, social studies, or political science at the secondary school level;

(b) Demonstrated intention to pursue a program of graduate study that emphasizes the Constitution and to offer classroom instruction in that subject;

(c) Demonstrated record of willingness to devote themselves to civic responsibility;

(d) Outstanding performance or potential of performance as classroom teachers;

(e) Academic achievements and demonstrated capacity for graduate study; and

(f) Proposed courses of graduate study, especially the nature and extent of their subject matter components, and their relationship to the enhancement of applicants' teaching and professional activities.

§ 2400.31 Selection process.

(a) An independent Fellow Selection Committee will evaluate all valid applications and recommend to the Foundation the most outstanding applicants from each state for James Madison Fellowships.

(b) From among candidates recommended for fellowships by the Fellow Selection Committee, the Foundation will name James Madison Fellows. The selection procedure will assure that at least one James Madison Fellow, junior or senior, is selected from each state in which there are at least two legally resident applicants who meet the eligibility requirements set forth in § 2400.3 and are judged favorably against the selection criteria in § 2400.30.

(c) The Foundation may name, from among those applicants recommended by the Fellow Selection Committee, an alternate or alternates for each fellowship. An alternate will receive a fellowship if the person named as a James Madison Fellow declines the award or is not able to pursue graduate study as contemplated at the time the fellowship was accepted. An alternate may be named to replace a Fellow who declines or relinquishes an award until, but no later than, March 1st following the competition in which the alternate has been selected.

(d) Funds permitting, the Foundation may also select, from among those recommended by the Fellow Selection Committee, Fellows at large.

Subpart E—Graduate Study

§2400.40 Institutions of graduate study.

Fellowship recipients may attend any accredited university in the United States with a master's degree program offering courses or training that emphasize the origins, principles, and development of the Constitution of the United States and its comparison with the constitutions and history of other forms of government.

§2400.41 Degree programs.

(a) Fellows may pursue a master's degree in history or political science (including government or politics), the degree of Master of Arts in Teaching in history or political science (including government or politics), or a related master's degree in education that permits a concentration in American history, American government, social studies, or political science. Graduate degrees under which study is excluded from fellowship support are indicated in §2400.63.

(b) A master's degree pursued under a James Madison Fellowship may entail either one or two years or their equivalent of study, according to the requirements of the university at which a Fellow is enrolled.

§2400.42 Approval of Plan of Study.

The Foundation must approve each Fellow's Plan of Study. To be approved, the plan must:

(a) On a part-time or full-time basis lead to a master's degree in history or political science, the degree of Master of Arts in Teaching in history or political science, or a related master's degree in education that permits a concentration in American history, American government, social studies, or political science;

(b) Include courses, graduate seminars, or opportunities for independent study in topics directly related to the framing and history of the constitution of the United States;

(c) Be pursued at a university that assures a willingness to accept up to 6 semester hours of accredited transfer credits from another graduate institution for a Fellow's satisfactory completion of the Foundation's Summer Institute on the Constitution. For the Foundation's purposes, these 6 semester hours may be included in the required minimum of 12 semester hours or their equivalent of study of the United States Constitution; and

(d) Be pursued at a university that encourages the Fellow to enhance his or her capacities as a teacher of American history, American government, social studies, or political science and to continue his or her career as a secondary school teacher. The Foundation reserves the right to refuse to approve a Fellow's Plan of Study at a university that will not accept on transfer the 6 credits for the Institute.

§2400.43 Required courses of graduate study.

(a) To be acceptable to the Foundation, those courses related to the Constitution referred to in §2400.43(b) must amount to at least 12 semester or 18 quarter hours or their credit hour equivalent of study of topics directly related to the United States Constitution. More than 12 semester hours or their credit hour equivalent of such study is strongly encouraged.

(b) The courses that fulfill the required minimum of 12 semester hours or their credit hour equivalent of study of the United States Constitution must cover one or more of the following subject areas:

(1) The history of colonial America leading up to the framing of the Constitution;

(2) The Constitution itself, its framing, the history and principles upon which it is based, its ratification, the *Federalist Papers,* Anti-Federalist writings, and the Bill of Rights;

(3) The historical development of political theory, constitutional law, and civil liberties as related to the Constitution;

(4) Interpretations of the Constitution by the Supreme Court and other branches of the federal government;

(5) Debates about the Constitution in other forums and about the effects of constitutional norms and decisions upon American society and culture; and

(6) Any other subject clearly related to the framing, history, and principles of the Constitution.

(c) If a master's degree program in which a Fellow is enrolled requires a master's thesis in place of a course or courses, the Fellow will have the option of writing the thesis based on the degree requirements. The preparation of a master's thesis should not add additional required credits to the minimum number of credits required for the master's degree. If a Fellow must write a thesis, the topic of the thesis must relate to subjects concerning the framing, principles, or history of the United States Constitution. If the Fellow can choose between two degree tracks, a thesis track or a non-thesis track, the Foundation strongly encourages the non-thesis track.

§ 2400.44 Commencement of Graduate Study.

(a) Fellows may commence study under their fellowships as early as the summer following the announcement of their award. Fellows are normally expected to commence study under their fellowships in the fall term of the academic year following the date on which their award is announced. However, as indicated in § 2400.6, they may seek to postpone the commencement of fellowship study under extenuating circumstances.

(b) In determining the two- and five-year fellowship periods of Junior and Senior Fellows respectively, the Foundation will consider the commencement of the fellowship period to be the date on which each Fellow commences study under a fellowship.

§ 2400.45 Special consideration: Junior Fellows' Plan of Study.

Applicants for Junior Fellowships who seek or hold baccalaureate degrees in education are strongly encouraged to pursue master's degrees in history or political science. Those applicants who hold undergraduate degrees in history, political science, government, or any other subjects may take some teaching methods and related courses, although the Foundation will not pay for them unless they are required for the degree for which the Fellow is matriculated. The Foundation will review each proposed Plan of Study for an appropriate balance of subject matter and other courses based on the Fellow's goals, background, and degree requirements.

§ 2400.46 Special consideration: second master's degree.

The Foundation may award Senior Fellowships to applicants who are seeking their second master's degrees providing that the applicants' first master's degree was obtained at least five years prior to the year in which the applicants would normally commence study under a fellowship. In evaluating applications from individuals intending to pursue a second master's degree, the Fellow Selection Committee will favor those applicants who are planning to become American history, American government, social studies, or political science teachers after having taught another subject and applicants whose initial master's degree was in a subject different from that sought under the second master's degree.

§ 2400.47 Summer Institute's relationship to fellowship.

Each year, the Foundation offers, normally during July, a four-week graduate-level Institute on the principles, framing, ratification, and implementation of the United States Constitution at an accredited university in the Washington, DC area. The Institute is an integral part of each fellowship.

§ 2400.48 Fellows' participation in the Summer Institute.

Each Fellow is required as part of his or her fellowship to attend the Institute, normally during the summer following the Fellow's commencement of graduate study under a fellowship.

§ 2400.49 Contents of the Summer Institute.

The principal element of the Institute is a graduate history course, ''Foundations of American Constitutionalism.'' Other components of the Institute include study visits to sites associated with the lives and careers of members of the founding generation.

§ 2400.50 Allowances and Summer Institute costs.

For their participation in the Institute, Fellows are paid an allowance to help offset income foregone by their required attendance. The Foundation also funds the costs of the Institute and Fellows' round-trip transportation to and from the Institute site. The costs of tuition, required fees, books, room, and board entailed by the Institute will be paid for by the Foundation directly but may be offset against fellowship award limits if the credits earned for the Institute are included within the Fellows' degree requirements.

§ 2400.51 Summer Institute accreditation.

The Institute is accredited for six graduate semester credits by the university at which it is held. It is expected that the universities at which Fellows are pursuing their graduate study will, upon Fellows' satisfactory completion of the Institute, accept these credits or their credit-hour equivalent upon transfer from the university at which the Institute is held in fulfillment of the minimum number of credits required for Fellows' graduate degrees. Satisfactory completion of the Institute will fulfill 6 of the Foundation's 12 semester credits required in graduate study of the history and development of the Constitution. Fellows, with the Foundation's assistance, are strongly encouraged to make good faith efforts to have their universities incorporate the Institute into their Plan of Study and accept the 6 Institute credits toward the minimum number of credits required for their master's degrees.

Subpart F—Fellowship Stipend

§ 2400.52 Amount of stipend.

Junior and Senior Fellowships carry a stipend of up to a maximum of $24,000 pro-rated over the period of Fellows' graduate study. In no case shall the stipend for a fellowship exceed $12,000 per academic year. Within this limit, stipends will be pro-rated over the period of Fellows' graduate study as follows: a maximum of $6,000 per academic semester or trimester of full-time study, and a maximum of $4,000 per academic quarter of full-time study. Stipends for part-time study will be pro rata shares of those allowable for full-time study.

§ 2400.53 Duration of stipend.

Stipends for Junior Fellowships may be payable over a period up to 2 calendar years of full-time graduate study, and those for Senior Fellowships may be payable over a period of not more than 5 calendar years of part-time graduate study, beginning with the dates under which Fellows commence their graduate study under their fellowships. However, the duration of stipend payments will be subject to the maximum payment limits, the length of award time limits, and the completion of the minimum degree requirements, whichever occurs first.

§ 2400.54 Use of stipend.

Stipends shall be used only to pay the costs of tuition, required fees, books, room, and board associated with graduate study under a fellowship. The costs allowed for a Fellow's room and board will be the amount the Fellow's university reports to the Foundation as the cost of room and board for a graduate student if that student were to share a room at the student's university. If no shared graduate housing exists, then costs for regular shared student housing will be used. If no campus housing exists, the equivalent room and board costs at neighboring universities will be used. Stipends for room, board, and books will be pro-

rated for Fellows enrolled in study less than full time. The Foundation will not reimburse Fellows for any portion of their master's degree study, that Fellows may have completed prior to the commencement of their fellowships. Nor will the Foundation reimburse Fellows for any credits acquired above the minimum number of credits required for the degree. If a Fellow has already taken and paid for courses that can be credited toward the Fellow's graduate degree under a fellowship, those must be credited to the degree; the remaining required courses will be paid for by the Foundation.

§ 2400.55 Certification for stipend.

In order to receive a fellowship stipend, a Fellow must submit the following nine items in writing:

(a) An acceptance of the terms and conditions of the fellowship including a completed certificate of compliance form;

(b) Evidence of admission to an approved graduate program;

(c) Certified copies of undergraduate and, if any, graduate transcripts;

(d) A certified payment request form indicating the estimated costs for tuition, required fees, books, room, and board;

(e) a photo copy of the university's bulletin of cost information;

(f) the amount of income from any other grants or awards;

(g) information about the Fellow's degree requirements, including the number of required credits to fulfill the degree;

(h) a statement of the university's willingness to accept the transfer of 6 credits toward the Fellow's degree requirements for the Fellow's satisfactory completion of the Summer Institute (see § 2400. 51); and

(i) a full Plan of Study over the duration of the fellowship, including information on the contents of required courses. Senior Fellows must provide evidence of their continued full-time employment as teachers in grades 7–12.

§ 2400.56 Payment of stipend.

Payment for tuition, required fees, books, room, and board subject to the limitations in § 2400.52 through § 2400.55 and § 2400.59 through § 2400.60 will be paid to each Fellow at the beginning of each term of enrollment upon the Fellow's submission of a completed Payment Request Form and the University bulletin of cost information.

§ 2400.57 Termination of stipend.

(a) The Foundation may suspend or terminate the payment of a stipend if a Fellow fails to meet the criteria set forth in § 2400.40 through § 2400.44 and § 2400.60, except as provided for in § 2400.61. Before it suspends or terminates a fellowship under these circumstances, the Foundation will give notice to the Fellow, as well as the opportunity to be heard with respect to the grounds for suspension or termination.

(b) The Foundation will normally suspend the payment of a stipend if a Fellow has more than one grade of ''Incomplete'' in courses for which the Foundation has made payment to the Fellow.

§ 2400.58 Repayment of stipend.

(a) If a Fellow fails to secure a master's degree, fails to teach American history, American government, social studies, or political science on a full-time basis in a secondary school for at least one school year for each academic year for which assistance was provided under a fellowship, fails to secure fewer than 12 semester hours or their credit hour equivalent for study of the Constitution as indicated in § 2400.43(b), or fails to attend the Foundation's Summer Institute on the Constitution, the Fellow must repay all of the fellowship costs received plus interest at the rate of 6% per annum or as otherwise authorized and, if applicable, reasonable collection fees, as prescribed in Section 807 of the Act (20 U.S.C. 4506(b)).

(b) If a Fellow withdraws from the fellowship or has a fellowship terminated by the Foundation, the Foundation will seek to recover all fellowship funds which have been remitted to the Fellow or on his or her behalf under a fellowship.

Subpart G—Special Conditions

§2400.59 Other awards.

Fellows may accept grants from other foundations, institutions, corporations, or government agencies to support their graduate study or to replace any income foregone for study. However, the stipend paid by the Foundation for allowable costs indicated in §2400.52 will be reduced to the extent these costs are paid from other sources, and in no case will fellowship funds be paid to Fellows to provide support in excess of their actual total costs of tuition, required fees, books, room, and board. The Foundation may also reduce a Fellow's stipend if the Fellow is remunerated for the costs of tuition under a research or teaching assistantship or a work-study program. In such a case, the Foundation will require information from a Fellow's university about the intended use of assistantship or work-study support before remitting fellowship payments.

§2400.60 Renewal of award.

(a) Provided that Fellows have submitted all required documentation and are making satisfactory academic progress, it is the intent of the Foundation to renew Junior Fellowship awards annually for a period not to exceed two calendar years or the completion of their graduate degrees, whichever comes first, and Senior Fellowships for a period not to exceed 5 calendar years (except when those periods have been altered because of changes in Fellows' Plan of Study as provided for in §2400.64), or until a Fellow has completed all requirements for a master's degree, whichever comes first. In no case, however, will the Foundation continue payments under a fellowship to a Fellow who has reached the maximum payments under a fellowship as indicated in §2400.52, or completed the minimum number of credits required for the degree. Although Fellows are not discouraged in taking courses in addition to those required for the degree or required to maintain full-time status, the Foundation will not in such cases pay for those additional courses unless they are credited to the minimum number of credits required for the degree.

(b) Fellowship renewal will be subject to an annual review by the Foundation and certification by an authorized official of the university at which a Fellow is registered that the Fellow is making satisfactory progress toward the degree and is in good academic standing according to the standards of each university.

(c) As a condition of renewal of awards, each Fellow must submit an annual activity report to the Foundation by July 15th. That report must indicate, through submission of a copy of the Fellow's most recent transcript, courses taken and grades achieved; courses planned for the coming year; changes in academic or professional plans or situations; any awards, recognitions, or special achievements in the Fellow's academic study or school employment; and such other information as may relate to the fellowship and its holder.

§2400.61 Postponement of award.

Upon application to the Foundation, a Fellow may seek postponement of his or her fellowship because of ill health or other mitigating circumstances, such as military duty, temporary disability, necessary care of an immediate family member, or unemployment as a teacher. Substantiation of the reasons for the requested postponement of study will be required.

§2400.62 Evidence of master's degree.

At the conclusion of graduate studies, each Fellow must provide a certified transcript which indicates that he or she has secured an approved master's degree as set forth in the Fellow's original Plan of Study or approved modifications thereto.

§2400.63 Excluded graduate study.

James Madison Fellowships do not provide support for study toward doctoral degrees, for the degree of master of arts in public affairs or public administration, or toward the award of teaching certificates. Nor do fellowships support practice teaching required for professional certification or other courses related to teaching unless those courses are required for the degree. In those cases, however, the

Foundation will provide reimbursement only toward those courses related to teaching that fall within the minimum number of courses required for the degree, not in addition to that minimum.

§ 2400.64 Alterations to Plan of Study.

Although Junior Fellows are expected to pursue full-time study and Senior Fellows to pursue part-time study, the Foundation may permit Junior Fellows with an established need (such as the need to accept a teaching position) to study part time and Senior Fellows with established need (such as great distance between the Fellow's residence and the nearest university, thus necessitating a full-time leave of absence from employment in order to study) to study full time.

§ 2400.65 Teaching obligation.

Upon receiving a Master's degree, each Fellow must teach American history, American government, social studies, or political science on a full-time basis to students in secondary school for a period of not less than one year for each academic year for which financial assistance was received. Each Fellow will be required to provide the Foundation with an annual certification from an official of the secondary school where the Fellow is employed indicating the teaching activities of the Fellow during the past year. This same certification will be required each year until the Fellow's teaching obligation is completed. Any teaching done by the Fellow prior to or during graduate studies does not count towards meeting this teaching obligation.

§ 2400.66 Completion of fellowship.

A Fellow will be deemed to have satisfied all terms of a fellowship and all obligations under it when the Fellow has completed no fewer than 12 graduate semester hours or the equivalent of study of the Constitution, formally secured the masters degree, attended the Foundation's Summer Institute on the Constitution, completed teaching for the number of years and fractions thereof required as a condition of accepting Foundation support for study, and submitted all required reports.

PART 2490—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

Sec.

AUTHORITY: 29 U.S.C. 794.

SOURCE: 58 FR 57699, Oct. 26, 1993, unless otherwise noted.

§ 2490.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 2490.102 Application.

This part (§§ 2490.101—2490.170) applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§2490.103 Definitions.

For purposes of this part, the term—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TTD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term ''physical or mental impairment'' includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, HIV disease (whether symptomatic or asymptomatic), and drug addiction and alcoholism.

(2) *Major life activities* include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

Qualified individual with handicaps means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, an individual with handicaps who is a member of a

class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency;

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) *Qualified handicapped person* as that term is defined for purposes of employment in 29 CFR 1614.203(a)(6), which is made applicable to this part by § 2490.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended. As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 2490.104—2490.109 [Reserved]

§ 2490.110 Self-evaluation.

(a) The agency shall, by November 28, 1994, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 2490.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this part.

§§ 2490.112—2490.129 [Reserved]

§ 2490.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in according equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with

handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards;

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are no separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 2490.131—2490.139 [Reserved]

§2490.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1614, shall apply to employment in federally conducted programs or activities.

§§ 2490.141—2490.148 [Reserved]

§2490.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in §2490.150, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§2490.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and

usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 2490.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 2490.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to an historic property is not required because of § 2490.150(a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by January 24, 1994, except that where structural changes in facilities are undertaken, such changes shall be made by November 26, 1996, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by May 26, 1994, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan

shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§2490.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§2490.152—2490.159 [Reserved]

§2490.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §2490.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 2490.161—2490.169 [Reserved]

§ 2490.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1614 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Director of Administration and Finance shall be responsible for coordinating implementation of this section. Complaints may be sent to James Madison Memorial Fellowship Foundation, 2000 K Street, NW., suite 303, Washington, DC 20006.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 2490.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[58 FR 57699, Oct. 26, 1993]

§§ 2490.171—2490.999 [Reserved]

CHAPTER XXV—CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

PART 2500—GENERAL

AUTHORITY: 42 U.S.C. 12501 et seq., as amended.

SOURCE: 57 FR 5299, Feb. 13, 1992, unless otherwise noted.

§ 2500.1 Purposes and goals.

The purposes and goals of this chapter are:

(a) To renew the ethic of civic responsibility in the United States;

(b) To encourage citizens, regardless of age, income or ability, to engage in full-time or part-time service to the Nation;

(c) To involve youth in programs that will benefit the Nation and improve their own lives;

(d) To enable young adults to make a sustained commitment to service by removing barriers created by high education costs, loan indebtedness and the cost of housing;

(e) To build on the network of existing Federal, State, and local programs and agencies to expand full-time and part-time service opportunities for all citizens, particularly youth and older Americans;

(f) To involve participants in activities that would not otherwise be performed by paid workers;

(g) To generate additional volunteer service hours to help meet human, educational, environmental and public safety needs, particularly those relating to poverty;

(h) To encourage institutions to volunteer their resources and energies and encourage service among their members, employees, and affiliates;

(i) To identify successful and promising community service initiatives and disseminate information about them; and

(j) To discover and encourage new leaders, especially youth leaders, and to develop individuals and institutions that demonstrate that a successful life includes serving others.

§ 2500.2 Definitions.

(a) As used in this chapter:

(1) *Act* means the National and Community Service Act of 1990 (Pub. L. 101–610, as amended).

(2) *Administrative costs or expenses* include: Costs associated with overall program administration; salaries and benefits for director and administrative staff of existing organizations that sponsor a funded program; and insurance that protects the grantee (e.g., liability insurance). Non-administrative (direct service) Costs include: Costs relating to service delivery (services that directly benefit participants); salaries and benefits of staff who train, place, and supervise such staff; costs of providing living allowances and usual in-service education and training for participants; insurance that benefits participants; and evaluation of the program as required by the terms and conditions of the grant. Of course, particular costs charged to the proposed program might be pro-rated (with documentation) between direct services and administration. If personnel, equipment, or other resources are shared between the proposed program and unrelated programs, the costs must be prorated.

(3) *Adult volunteer* means:

(i) An individual who is beyond the age of compulsory schooling, including an older American, an individual with a disability, or a parent;

(ii) An employee of a private business;

(iii) An employee of a public or nonprofit agency; or

(iv) Any other individual working without financial remuneration in an educational institution to assist students or out-of-school youth.

(4) *Commission* means the Commission on National and Community Service established under section 190 of the Act.

(5) *Community-based agency* means a private nonprofit organization that is representative of a community or a significant segment of a community and that is engaged in meeting human, educational, or environmental community needs, including churches and other religious entities, public safety organizations and community action agencies.

(6) *Crew* means a team of youth corps participants organized to work jointly on a project or to engage in team activities even if participants do not work jointly on service projects.

(7) *Crew Leader* means a participant assigned to a position of responsibility or leadership over a crew of participants.

(8) *Crew Supervisor* means the adult staffperson who is responsible for supervising a crew of participants, including the crew leader.

(9) *Disability* has the same meaning given such term in section 3(2) of the Americans with Disabilities Act (42 U.S.C. 12101, et seq.).

(10) *Economically Disadvantaged* with respect to youth has the same meaning given such term in section 4(8) of the Job Training Partnership Act (29 U.S.C. 1503(8)).

(11) *Elementary School* means a day or residential school which provides elementary education, as determined under State law.

(12) *Indian* means a person who is a member of an Indian tribe.

(13) *Indian Lands* means any real property owned by an Indian tribe, any real property held in trust by the United States for Indian tribes, and any real property held by Indian tribes that is subject to restrictions on alienation imposed by the United States.

(14) *Indian Tribe* means an Indian tribe, band, nation, or other organized group or community, including Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) that is recognized by the United States as Indians because of their status as Indians.

(15) *Institution of Higher Education* has the same meaning given such term in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

(16) *Local Applicant* means any eligible applicant other than a State or Indian tribe.

(17) *Local Educational Agency* has the same meaning given such term in Section 1471(12) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12)).

(18) *Local Government Agency* means a public agency that is engaged in meeting human, social, educational, or environmental needs, including public safety agencies.

(19) Non-Participant Volunteer means an individual who is not a participant enrolled in a program but who assists a program funded under this Chapter by providing volunteer services.

(20) *Out-Of-School Youth* means an individual who:

(i) Has not attained the age of 27;

(ii) Has not completed college or the equivalent thereof; and

(iii) Is not enrolled in an elementary or secondary school or institution of higher education.

(21) *Participant* means an individual enrolled in a program that receives assistance under this Chapter. Participants shall not be considered employees of the program.

(22) *Partnership Program* means a program through which adult volunteers, public or private aqencies, institutions of higher education, or businesses assist a local educational agency.

(23) *Placement* means the matching of a participant with a specific project.

(24) *Program* means an activity carried out with assistance provided under this Chapter.

(25) *Program Agency* means:

(i) A Federal or State agency designated to manage a youth corps program;

(ii) The governing body of an Indian tribe that administers a youth corps program; or

(iii) A local applicant administering a youth corps program.

(26) *Project* means an activity that results in a specific identifiable service or product that otherwise would not be done with existing funds, and that does not duplicate the routine services or functions of the employer to whom participants are assigned.

(27) *Public Lands* means any lands or waters (or interest therein) owned or administered by the United States or by an agency or instrumentality of a State or local government.

(28) *Secondary School* means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

(29) *Service-Learning* means a method:

(i) Under which students learn and develop through active participation in thoughtfully organized service experiences that meet actual community needs and that are coordinated in collaboration with the school and community;

(ii) That is integrated into the students, academic curriculum or provides structured time for a student to think, talk, or write about what the student did and saw during the actual service activity;

(iii) That provides students with opportunities to use newly acquired skills and knowledge in real-life situations in their own communities; and

(iv) That enhances what is taught in school by extending student learning beyond the classroom and into the community and helps to foster the development of a sense of caring for others.

(30) *Service Opportunity* means a program or project, including service-learning programs or projects, that enables participants to perform meaningful and constructive service in agencies, institutions, and situations where the application of human talent and dedication may help to meet human, educational, linguistic, public safety, and environmental community needs, especially those relating to poverty.

(31) *Special Senior Service Participant* means an individual who is age 60 or over and willing to work full-time or part-time in conjunction with a full-time national service program.

(32) *Sponsoring Organization* means an organization, eligible to receive assistance under this chapter, that has been selected to provide a placement for a participant.

(33) *State* means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands. Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Palau, until such time as the Compact of Free Association is ratified.

(34) *State Educational Agency* has the same meaning given such term in section 1471(23) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(23)).

(35) *Student* means an individual who is enrolled in an elementary or secondary school or institution of higher education on a full- or part-time basis.

(36) *Summer Program* means a youth corps program authorized under this chapter that is limited to the months of June, July, and August.

(37) *Youth Corps Program* means a program, such as a conservation corps or youth service corps program, that offers full-time, productive work (to be financed through living allowances) with visible community benefits in a natural resource or human service setting and that gives participants a mix of work experience, basic and life skills, education, training, and support services.

(b) *Authority To Make State Grants.* The Commission may, in accordance with the provisions of this chapter, make grants to States, Indian Tribes, and local applicants, to enable them to carry out programs under parts 2501, 2502, 2503, 2504, and 2505 of this chapter.

§2500.3 Consolidated applications.

(a) General. The Commission shall not award more than one grant during each fiscal year to each State under this Chapter. The grant will be designated for use in accordance with one or more parts of this chapter.

(b) Number of Applications. A State may apply for a grant to operate one or more of the programs described in parts 2501 through 2505 of this chapter and shall consolidate all of its applications for the conduct of programs under parts 2501 through 2505 into a single application that meets the requirements of this chapter.

(c) Multiple Use. A grant awarded to a State shall be used by the State in accordance with the applications consolidated, submitted, and approved under the parts. A State may, for example, apply to operate programs under two of the programs authorized under this chapter, but might receive funds for only one of the two programs. States may not shift funds from one program to another, and must use its grant for the program or programs designated in the application and the grant award.

(d) Comprehensive Service Plan. All applications submitted by States shall include a service plan that includes information about the programs proposed

to be conducted with funds under this chapter, as well as information related to the applicant's overall strategy for expanding commitment to service. The plan shall describe:

(1) Critical human, educational, environmental, and public safety needs, particularly those needs relating to low-income communities and people, that will be addressed through institutions and individuals engaging in community service;

(2) Efforts to generate additional community service hours each year and to encourage additional individuals to engage in community service;

(3) Efforts to discover and encourage new leaders, especially youth, develop individuals and institutions that serve as strong examples of a commitment to service, and convey to all Americans the importance of serving others;

(4) Efforts to encourage young people to serve in programs that will benefit the Nation, and eliminate barriers to full- and part-time service, especially for low-income individuals;

(5) Efforts to build on the existing organizational framework of Federal, State, and local programs and agencies to expand service-opportunities, particularly for youth and older Americans;

(6) Efforts to encourage institutions, such as government, business, nonprofit organizations, and religious and educational institutions, to volunteer their resources, and encourage and facilitate community service among their members, employees, affiliates and others involved with the institution;

(7) The interrelationship among programs proposed to be funded under the Act;

(8) Joint planning efforts and partnerships undertaken to develop this plan, including any involvement of local public and private organizations, youth, low-income communities and people, or a State Advisory Board; and

(9) Such other information as specified by the State.

(e) If a State cannot complete the Comprehensive State Plan in time to submit the Plan with its application, the State may submit a plan that describes planning efforts to be conducted during the term of the grant, including a timetable for completion of a plan that covers the information required in § 2500.3(d).

§ 2500.4 Development of the Comprehensive State Plan.

(a) *General.* Each State that applies for assistance under this Part is required to solicit broad-based and local input in developing the Comprehensive State Plan in a bipartisan or nonpartisan manner. A State might, for example, establish a State Advisory Board, assign an existing bipartisan or nonpartisan committee to perform an advisory function, or hold public hearings on the plan.

(b) *Formation of a State Advisory Board.* Each State that applies for assistance under this part is encouraged to establish a bipartisan and nonpartisan State Advisory Board for National and Community Service.

(c) *Appointment of a State Advisory Board.* If a State elects to appoint a new State Advisory Board: (1) The chief executive officer shall appoint members to the State Advisory Board of National and Community Service from among:

(i) Representatives of State agencies administering community service, youth service, and job training programs;

(ii) Youth and low-income individuals; and

(iii) Representatives of labor, business, agencies working with youth, community-based organizations such as community action agencies, students, teachers, Older American Volunteer Programs as established under title II of the Domestic Volunteer Service Act of 1973, full-time youth service corps programs, school-based community service programs, higher education institutions, local educational agencies, volunteer public safety organizations, educational partnership programs, and other organizations working with volunteers.

(2) To the extent possible, the membership of the Advisory Board shall be balanced according to race, ethnicity, age, gender, and political party, and shall include individuals with disabilities.

(d) *Duties of the Board.* If the State elects to appoint a state advisory

board, the Board shall assist the State agency administering a program under this chapter in:

(1) Developing the Comprehensive Service Plan described in §2500.3(d);

(2) Coordinating programs receiving assistance under this Chapter and related programs within the State;

(3) Disseminating information concerning service programs that receive assistance under this chapter;

(4) Recruiting participants for projects that receive assistance under this chapter;

(5) Developing programs, training methods, curriculum materials, and other materials and activities related to programs receiving assistance under this chapter; and

(6) Developing an evaluation plan for the proposed program regarding its effectiveness and the achievement of proposed goals and predicted outcomes.

PART 2501—SERVE–AMERICA: PROGRAMS FOR STUDENTS AND OUT-OF-SCHOOL YOUTH

Sec.

AUTHORITY: 42 U.S.C. 12501 et seq.

SOURCE: 57 FR 5302, Feb. 13, 1992, unless otherwise noted.

§2501.1 Eligibility to receive grants.

(a) States and Indian Tribes whose applications are approved by the Commission are eligible to receive Serve-America operating or planning grants.

(b) Local applicants meeting the requirements in paragraph (c) of this section are eligible to receive Serve-America operating grants to conduct activities described in §2501.9 (b), (c), and (d):

(1) From the State in which they are located, subject to the approval of the State Educational Agency; or

(2) Directly from the Commission, if the local applicant is located in a State that has not submitted an application for a Serve-America operating or planning grant.

(c) Eligibility for Serve-America grants. (1) To implement, operate, or expand a school-based service-learning program described in §2501.9(b) of this part, a local applicant must be:

(i) A local educational agency working in partnership with one or more public or private nonprofit organizations that will make service opportunities available for participants; or

(ii) A public or private nonprofit organization that will make service opportunities available for participants, working in partnership with one or more local educational agencies;

(2) To implement, operate, or expand a community service program described in §2501.9(c) of this part, a local applicant must be:

(i) A public or private nonprofit organization that works with disadvantaged youth working in partnership with one or more public or private nonprofit organizations that will make service opportunities available for participants; or

(ii) A public or private nonprofit organization that will make service opportunities available working in partnership with one or more public or private nonprofit organizations that work with disadvantaged youth;

(3) To implement, operate, or expand an adult volunteer or partnership program described in §2501.9(d) of this part, a local applicant must be:

(i) A local educational agency working in partnership with one or more public or private nonprofit organizations or private forprofit businesses; or

(ii) A public or private nonprofit organization working in partnership with one or more local educational agencies;

(4) For the purposes of this section, the term ''partnership'' means pursuant to a written agreement specifying the responsibilities of each partner with respect to the development and

operation of the program proposed to be conducted under this part.

GENERAL APPLICATION PROVISIONS AND PROCEDURES

§ 2501.2 State application.

(a) An application for Serve-America funds may be made by the State, acting through the State Educational Agency. The application must contain:

(1) The amount of funds requested for each fiscal year during the period covered by the State plan described in § 2501.5;

(2) An assurance that the State will comply with the requirements of this chapter;

(3) A budget of expenditures, which provides an estimate of the use and distribution of Serve-America funds during the period covered by the application consistent with the provisions of § 2501.5 of this part;

(4) An assurance that the State will ensure compliance with the Drug-Free Workplace Requirements for Federal Grant Recipients under section 5153 through 5158 of the Anti-Drug Abuse Act of 1988 (41 U.S.C. 702–707);

(5) The State Serve-America Proposal, as required in § 2501.5 of this part;

(6) The number of individuals currently involved in community service as participants in programs proposed to receive funds under this part (if known);

(7) The number of additional participants and non-participant volunteers expected to become involved in community service under the program (if known);

(8) A description of how non-participant volunteers will assist the program, (if known); and

(9) Such other information as specified by the Commission.

(b) Applications must be submitted annually at such time and in such manner as prescribed by the Commission.

§ 2501.3 Local application.

An application for Serve-America funds made by local applicants eligible for grants under § 2501.1(b) of this part must contain:

(a) The amount of funds requested for the period covered by the application;

(b) An assurance that the local applicant will comply with the requirements of this chapter;

(c) A budget of expenditures, which provides an estimate of the use of Serve-America funds during the period covered by the application;

(d) An assurance that the applicant will ensure compliance with the Drug-Free Workplace Requirements for Federal Grant Recipients under sections 5153 through 5158 of the Anti-Drug Abuse Act of 1988 (41 U.S.C. 702–707);

(e) A local Serve-America proposal, as required in § 2501.6 of this part;

(f) A copy of a written agreement between the partners stating that the proposed program was jointly developed by the parties and that the program will be jointly executed by the parties;

(g) The number of individuals currently involved in community service as participants in programs proposed to receive funds under this part (if applicable);

(h) The number of additional participants and non-participant volunteers expected to become involved in community service under the program;

(i) A description of how non-participant volunteers will assist the program; and

(j) Such other information as specified by the Commission or the State Educational Agency.

§ 2501.4 Assurances.

(a) The State Serve-America Proposal must include assurances that:

(1) The State will ensure that local applicants are funded in accordance with the provisions of this chapter;

(2) The State will keep such records and provide such information to the Commission as may be required for fiscal audits and program evaluation;

(3) The State will assure that local applicants comply with the requirements of this Chapter; and

(4) The State will develop the State Serve-America proposal in consultation with, and solicit information from, a broad-based group of public and private nonprofit eligible organizations.

(b) The local Serve-America proposal must include assurances that:

(1) The local applicant will assure compliance with the requirements of this chapter;

(2) Prior to the placement of a participant, the program will consult with any local labor organization representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by such program;

(3) An assurance that the applicant will develop an age-appropriate learning component for participants in the program that shall include a chance for participants to reflect on service experiences and expected learning outcomes; and

(4) Assurances that participants in the program will be provided with information concerning VISTA, the Peace Corps, the GI Bill, full-time Youth Service Corps and National Service programs receiving assistance under this Title, and other service options and their benefits (such as student loan deferment and forgiveness) as appropriate.

§2501.5 State Serve-America Proposal.

(a) A State Serve-America Proposal for an operating grant must cover a period of not more than three years and must contain a description of the manner in which:

(1) Local applicants will be ranked by the State according to the criteria described in §2501.16 of this part and in a manner that ensures the equitable treatment of local applications submitted by both local educational agencies and community-based organizations;

(2) Service programs within the State will be coordinated with each other and with other Federally assisted education programs, training programs, and other appropriate programs that serve youth;

(3) Cooperative efforts among local educational agencies, local government agencies, community-based agencies, businesses, and State agencies to develop and provide service opportunities, including those that involve the participation of urban, suburban, and rural youth working together, will be encouraged;

(4) Economically and educationally disadvantaged youths, including individuals with disabilities, youth with limited basic skills or learning disabilities, youth in foster care who are becoming too old for foster care, youth of limited English proficiency, and homeless youth are assured of service opportunities;

(5) Service programs that receive assistance under this Part will be evaluated for effectiveness in achieving program objectives;

(6) Programs that receive assistance under this Part will serve urban and rural areas and tribal areas that exist within such State;

(7) Training and technical assistance will be provided to local grantees by qualified and experienced individuals employed by the State or through grant or contract with experienced content specialist and youth service resource organizations;

(8) Non-Federal assistance will be used to expand service opportunities for students and out-of-school youth;

(9) Information and outreach services will be disseminated and utilized to ensure the involvement of a broad range of organizations, particularly community-based organizations; and

(10) The State will give special consideration to providing assistance to projects that will provide academic credit to participants or are integrated into the academic program of the school.

(b) A State Serve-America Proposal for a planning grant must cover a period of not more than one year, describe activities mentioned in §2501.9(a) of this part proposed to be conducted under the plan, including a description of activities proposed to be accomplished through grants and contracts with qualified organizations and individuals.

§2501.6 Local Serve-America Proposal.

(a) A local Serve-America Proposal must: (1) Establish and specify the membership and role of an advisory committee. Representatives of community-based agencies including community action agencies, service recipients, youth-serving agencies, youth, parents, teachers, administrators, agencies that serve older adults, school

board members, labor, business, and individuals with disabilities, if any such entities exist in the community, shall be offered the opportunity to serve on the committee;

(2) Describe the goals of the program, which shall include goals that are quantifiable, measurable, and demonstrate any benefits that flow from the program to the participants and the community;

(3) Describe service opportunities to be provided under the program that shall include evidence that participants will make a sustained commitment to the service project;

(4) Describe the manner in which the participants in the program will be recruited, including any special efforts that will be utilized to recruit out-of-school youth with the assistance of community-based agencies;

(5) Describe the manner in which participants in the program were or will be involved in the design and operation of the program;

(6) Describe the qualifications, and responsibilities of the coordinator of the program assisted under this part;

(7) Describe pre-service and in-service training for supervisors, teachers, and participants in the program;

(8) Describe the manner in which exemplary service will be recognized;

(9) Describe any potential resources that will permit continuation of the program, if needed, after the assistance received under this part has ended; and

(10) Disclose whether the program plans include preventing and treating school-age drug and alcohol abuse and dependency.

(b) If the local applicant intends to operate a program described in §2501.9 (b) or (c) of this part, the local Serve-America proposal submitted by the applicant must include:

(1) A disclosure of whether or not the participants will receive academic credit for participation in the program and whether the program is integrated into the academic program of the school;

(2) The target levels of participants in the program and the target levels for the hours of service that such participants will provide individually and as a group;

(3) The proportion of expected participants in the program who are educationally or economically disadvantaged, including participants with disabilities;

(4) The ages or grade levels of expected participants in the program; and

(5) Other relevant demographic information concerning such expected participants.

(c) If the local applicant intends to operate a program described in §2501.9(d) of this part, the local Serve-America proposal must describe the students who will be assisted through such a program, including the ages and grade levels of such students.

§2501.7 Distribution of funds.

(a) If less than $20,000,000 is made available in each fiscal year to carry out parts 2501 and 2502, the Commission may award operating or planning grants to States and Indian Tribes, and to eligible local applicants in States that have not applied for funding under this part, on a competitive basis.

(b) If $20,000,000 or more is made available to carry out parts 2501 and 2502, the Commission will:

(1) Reserve not more than 1 percent for payments to lndian Tribes, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands and Palau, until such time as the Compact of Free Association is ratified to be allotted in accordance with their respective needs;

(2) Allot the remaining funds as follows: (i) From 50 percent of such remainder the Commission shall allot to each State an amount which bears the same ratio to 50 percent of such remainder as the school age population of the State bears to the school-age population of all States.

(ii) From 50 percent of such remainder the Commission shall allot to each State an amount which bears the same ratio to 50 percent of such remainder as allocations to the State for the previous fiscal year's appropriation under the basic grant of chapter 1 of title 1 of the Elementary and Secondary Education Act of 1965 bears to such allocations to all States.

(iii) For purposes of this paragraph: (A) The term ''school-age population''

means the population aged 5 through 17, inclusive;

(B) The term ''State'' includes the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(3) For any year in which a State is solely carrying out planning activities pursuant to a grant described in §2501.10 of this part, a State may be paid not more than 25 percent of its allotment under paragraph (b)(2) of this section;

(4) If any State does not have an application approved under §2501.8 of this part, the Commission may use the allotment the State would otherwise have received under paragraph (b)(2) of this section to make grants to eligible local applicants located within the State using the priority criteria described in §2501.16 of this part; and

(5) Funds remaining after the requirements of paragraphs (b) (1) through (4) of this section have been carried out will be reallotted to States as the Commission determines appropriate.

§2501.8 Approval.

(a)(1) lf §2501.7(a) of this part applies, the Commission will take into account whether the proposed plan meets the requirements of this Chapter and the appropriate criteria in §2501.16 of this part in approving applications to receive grants.

(2) If §2501.7(b) of this part applies, the Commission shall approve applications submitted by States, Indian Tribes, and eligible local applicants in States that have not applied for funding if such applications comply with the provisions of this Chapter and the appropriate criteria in §2501.16. Applications that comply with the provisions of this Chapter but do not fully comply with the appropriate criteria in §2501.16 may be approved for planning grants. The Commission may, at its discretion, assist applicants in bringing their applications into compliance.

(b) Applications submitted in the second or third year of a multi-year proposal will be approved if the Commission determines the applicant has made satisfactory progress under the proposal and if appropriated funds are available.

§2501.9 Uses of funds.

Grantees may use funds provided under this part for:

(a) Planning and building State capacity (which may be accomplished through grants and contracts with qualified organizations) for implementing statewide, school-aged service-learning programs, including:

(1) Pre-service and in-service training for teachers, supervisors, and personnel from community organizations in which service opportunities will be provided that will be conducted by qualified individuals or organizations that have experience in service-learning programs;

(2) Developing service-learning curricula, including age-appropriate learning components for students to analyze and apply their service experiences;

(3) Forming local partnerships to develop school-based community service programs in accordance with this part;

(4) Devising appropriate methods for research and evaluation of the educational value of youth service opportunities and the effect of youth service programs on communities;

(5) Establishing effective outreach and dissemination to ensure the broadest possible involvement of nonprofit community-based organizations and youth-service agencies with demonstrated effectiveness in their communities; and

(6) Integrating service-learning into academic curricula.

(b) The implementation, operation, or expansion of school-based service-learning programs.

(c) The implementation, operation, or expansion of community service programs for school dropouts, out-of-school youth and other youth.

(d) The implementation, operation, or expansion of programs involving adult volunteers in schools, or partnerships of schools and public or private organizations, to improve the education of at-risk students, school dropouts, and out-of-school youth.

§2501.10 Planning grants.

The Commission may make planning grants to States or Indian Tribes to conduct activities described in §2501.9(a) of this part. Such grants will

be not more than 25 percent of its formula allotment described in §2501.7(b)(2) of this part, provided that appropriated funds are available, or, if §250l.7(a) of this part applies, in an amount determined by the Commission to be sufficient to conduct the proposed activities. States are encouraged to use planning grants to assist potential local applicants plan Serve-America programs.

§ 2501.11 Term of grant.

(a) Grants to States and Indian Tribes, other than planning grants, shall be for a term of not more than three years, subject to annual appropriations.

(b) Grants made directly to local applicants by the Commission shall be for a term of not more than one year.

(c) Planning grants shall be for a term of not more than one year.

§ 2501.12 Federal share.

(a) The Federal share of an operating grant for a project under this part may not exceed:

(1) 90 percent of the total cost of a project for the first year for which the project receives assistance under this part;

(2) 80 percent of the total cost of a project for the second year for which the project receives assistance under this part; and

(3) 70 percent of the total cost of a project for the third year for which the project receives assistance under this part.

(b) The non-Federal share of the costs of the project may be in cash from public or private non-Federal funds or in kind.

(c) If a grantee is unable to pay the non-Federal share of the costs of the project due to lack of resources, the grantee may request a waiver of the requirements of paragraph (a) of this section. A request for a waiver must be in writing to the Commission and will be approved if the Commission determines that such a waiver would be equitable due to a lack of resources at the State or local level.

§ 2501.13 Reservation of funds.

A State receiving a Serve-America grant other than a planning grant shall use:

(a) Not more than 5 percent of such funds for administrative costs for any fiscal year;

(b) Not more than 10 percent of such funds to build capacity through training, technical assistance, curriculum development, and coordination activities, described in §2501.9(a) of this part;

(c) Not less than 60 percent of such funds to carry out school-based service learning programs described in §2501.9(b) of this part;

(d) Not less than 15 percent of such funds to carry out community-based service programs described in §2501.9(c) of this part; and

(e) Not more than 10 percent of such funds to carry out adult volunteer and partnership programs described in §2501.9(d) of this part.

§ 2501.14 Authorized uses of funds.

(a) Grants made under this part may be used for the supervision of participating students, including teacher stipends, program administration, training, reasonable transportation costs, insurance, evaluations, and for other reasonable expenses.

(b) Grants made available under this part may not be used to pay any stipend, allowance, or other financial support to any participant, except reimbursement for transportation, meals, and other reasonable out-of-pocket expenses directly related to participation in a program assisted under this part.

§ 2501.15 Participation of children and teachers from private schools.

To the extent consistent with the number of children in the State or in the school district of a local educational agency receiving funds under this part who are enrolled in private nonprofit elementary and secondary schools, such State or agency shall (after consultation with appropriate private school representatives) make provision:

(a) For the inclusion of services and arrangements for the benefit of such children so as to assure the equitable participation of such children in the programs or projects implemented to

carry out the purposes and provide the benefits described in this part;

(b) Where applicable, for the training of the teachers of such children so as to assure the equitable participation of such teachers in the programs of projects implemented to carry out the purposes and provide the benefits described in this part; and

(c) If a State or local educational agency or institution of higher education is prohibited by law from providing for the participation of children or teachers from private nonprofit schools as required by paragraph (a) of this section, or if the Commission determines that a State or local educational agency substantially fails or is unwilling to provide for such participation on an equitable basis, the Commission shall waive such requirements and shall arrange for the provision of services to such children and teachers. Such waivers shall be subject to consultation, withholding, notice, and judicial review requirements in accordance with section 1017 of the Elementary and Secondary Education Act of 1965.

§2501.16 Criteria for funding.

(a) In providing assistance under this part, the State Educational Agency, or the Commission if §2501.1(b)(2) of this part applies, shall give priority for funds described in §2501.9 (b) and (c) of this part to applications that describe programs that:

(1) Involve participants in the design and operation of the program;

(2) Are in the greatest need of assistance, such as programs targeting low-income areas;

(3) Involve students from both public and private elementary and secondary schools or individuals of different ages, races, sexes, ethnic groups, abilities and disabilities, and economic backgrounds serving together;

(4) Are integrated into the academic program;

(5) Involve a focus on substance abuse prevention or school dropout prevention;

(6) Best represent the potential of service-learning, including exploring the root-causes of community problems;

(7) Develop the leadership skills and qualities of participants; or

(8) Demonstrate the ability to achieve the goals of this chapter because of the program's quality, innovation, replicability, and sustainability.

(b) In providing assistance under this part, the State Educational Agency, or the Commission, if §2501.2(b)(2) applies, shall give priority for funds described in §2501.9(d) of this part to applications describing programs that:

(1) Involve older Americans or parents as adult volunteers;

(2) Involve a partnership between an educational institution and a private business in the community;

(3) Include a focus on substance abuse prevention, school dropout prevention, or nutrition;

(4) Will improve basic skills and reduce illiteracy; or

(5) Demonstrate the ability to achieve the goals of this chapter because of the program's quality, innovation, replicability, and sustainability.

(c) In providing assistance to States under this Part, if §2501.7(b) applies, the Commission will consider:

(1)(i) The quality of the program, based on the program's ability to offer valuable services in the communities where they are needed most and where programs do not exist or where existing volunteer service programs are too limited to meet community needs; to provide productive, meaningful, educational experiences for participants which incorporate service-learning methods; to involve the participants in the design and operation of the program; to involve individuals from diverse backgrounds (including economically disadvantaged youth), who will serve together and explore the root-causes of community problems; to be integrated into the academic program; and to develop the leadership skills of participants;

(ii) The quality of leadership and management, as measured by the qualifications of the principal leaders of the program; and plans and processes for recruitment, training, supervision, participant support, evaluation, administration and other key activities;

(2) Innovative aspects of the program based on the:

(i) Ability of the program to advance knowledge about effective community service in ways that will be broadly applicable beyond the program location; and

(ii) Approach to evaluation and other means of learning from the experience of the program;

(3)(i) Replicability, based on the ability and willingness of the program to assist others in learning from the experience and replicating the approach of the program; and

(4) Sustainability, based on:

(i) Inclusion in a State Comprehensive Plan;

(ii) Strong and broad-based community support for and involvement in the program; and

(iii) Evidence that financial resources will be available to continue the program after the expiration of the grant.

PART 2502—HIGHER EDUCATION PROGRAM: INNOVATIVE PROJECTS FOR COMMUNITY SERVICE

Sec.

AUTHORITY: 42 U.S.C. 12501 et seq.

SOURCE: 57 FR 5306, Feb. 13, 1992, unless otherwise noted.

§ 2502.1 General.

The purpose of this Part is to support innovative projects to encourage students to participate in community service activities.

§ 2502.2 Eligibility for grants.

The following are eligible for grants under this Part:

(a) Institutions of higher education;

(b) Consortia of institutions of higher education; and

(c) Public or private nonprofit agencies and organizations, including States, in consortia with institutions of higher education.

§ 2502.3 Types of grants.

The Commission may make grants under this Part for the following purposes:

(a) To enable institutions to create or expand community service activities for students attending that institution;

(b) To encourage student-initiated and student-designed community service projects;

(c) To facilitate the integration of community service into academic curricula, so that students can obtain credit for their community service;

(d) To encourage students to participate in community service activities that will engender a sense of social responsibility and commitment to the community;

(e) To encourage students to assist in the teaching of individuals with limited basic skills or an inability to read and write; and

(f) To provide for the training of teachers, prospective teachers, related education personnel, and community leaders in the skills necessary to develop, supervise, and organize community service activities, taking into consideration the particular needs of a community and the ability of the grantee to actively involve a major part of the community in, and substantially benefit the community by, the proposed community service activities.

§ 2502.4 Application.

(a) To receive a grant under this Part, an eligible applicant shall prepare and submit to the Commission an application that includes the following information:

(1) A description of the proposed program to be established with assistance provided under the grant;

(2) A description of the human, educational, environmental or public safety service that participants will perform and the community need that will be addressed under such program;

(3) A description of how participants have been involved in the design of the program and how participants will take leadership positions in implementing and evaluating the program;

(4) A description of whether or not students will receive academic credit for community service activities under the program and whether the program

is integrated into the academic curriculum;

(5) A description of the procedure for training supervisors and participants and supervising and organizing participants in such proposed program;

(6) A description of the procedures to ensure that the proposed program provides participants with an opportunity to reflect on their service experiences;

(7) A description of the budget for the program and the amount of funds requested for each fiscal year during the period covered by the application;

(8) Assurances that in the program, prior to the placement of a participant, the applicant will consult with any local labor organization representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by such project;

(9) The number of individuals currently involved in community service as participants in programs proposed to receive funds under this part (if applicable);

(10) The number of additional participants and nonparticipant volunteers expected to become involved in community service under the program;

(11) A description of how non-participant volunteers will assist the program;

(12) Whether or not the proposed program is part of a State Comprehensive Service Plan or endorsed by the State, even if the application for funding under this part is not being submitted by the State;

(13) A description of any local advisory committee that includes broad representation from the community; and

(14) Any additional information that the Commission may require.

§2502.5 Criteria for evaluating applications.

Applications for grants under this Part will be evaluated according to the following criteria:

(a)(1) The quality of the program, based on the program's ability to offer valuable services in the communities where they are needed most and where programs do not exist or where existing volunteer service programs are too limited to meet community needs; to provide productive, meaningful, educational experiences for participants that incorporate service-learning methods; to involve the participants in the design and operation of the program; to involve individuals from diverse backgrounds (including economically disadvantaged youth) who will serve together and explore the root-causes of community problems; to be integrated into the academic program; and to develop the leadership skills of participants;

(2) The quality of leadership and management, as measured by the qualifications of the principal leaders of the program and plans and processes for recruitment, training, supervision, participant support, evaluation, administration and other key activities;

(b) Innovation, based on the:

(1) Ability of the program to advance knowledge about effective community service in ways that will be broadly applicable beyond the program location; and

(2) Approach to evaluation and other means of learning from the experience of the program;

(c)(1) Replicability, based on the ability and willingness of the program to assist others in learning from the experience and replicating the approach of the program; and

(d) Sustainability, based on:

(1) Strong and broad-based community support for and involvement in the program;

(2) Campus-wide involvement, including faculty, staff, administration, and students; and

(3) Evidence that financial resources will be available to continue the program after the expiration of the grant.

§2502.6 Federal share.

(a) The Federal share of each grant awarded under this part shall not exceed 50 percent of the cost of the community service activities carried out with each such grant;

(b) The non-Federal share of each grant may be in cash (from non-Federal public or private funds) or in kind (fairly evaluated).

§2502.7 Reservation of funds.

Not more than five percent of funds awarded by the Commission may be

used for administrative costs for any fiscal year.

§ 2502.8 Term of grant.

Grants may be for up to three years, subject to annual review and availability of appropriations.

PART 2503—AMERICAN CONSERVATION AND YOUTH SERVICE CORPS PROGRAMS

Sec.

AUTHORITY: 42 U.S.C. 12501 et seq.

SOURCE: 57 FR 5307, Feb. 13, 1992, unless otherwise noted.

§ 2503.1 Purpose.

The purpose of this program is to provide grants for the creation or expansion of full-time or summer youth service or conservation corps programs, including grants for the addition of participants, an increase in the number of hours or weeks during which the program operates, the involvement of an existing program in new types of service, or the improvement of an existing program consistent with this part.

§ 2503.2 Eligibility.

States, Indian Tribes, local governments, and public and private nonprofit organizations are eligible to receive awards under this program. In addition, the Commission may make awards to, or enter into other appropriate arrangements with, the Secretary of Agriculture, the Secretary of the Interior, or the Director of ACTION to carry out this program.

§ 2503.3 Allocation of funds.

(a) The Commission will make awards on a competitive basis to States and Indian Tribes using the selection criteria and amount of award determination procedures specified in §§ 2503.4 and 2503.5 respectively.

(1) If a State does not apply for a grant, the Commission may award grants directly to local governments and public or private nonprofit agencies with experience in youth programs within the State;

(2) Under these circumstances, if more than one local applicant in the State applies for funds, the Commission will allocate funds among the local applicants in the State in a manner determined by the Commission;

(3) An Indian Tribe is treated the same as a State for purposes of making grants under this part. The Commission shall reserve an amount not to exceed one percent of the amounts available in each fiscal year to make grants to Indian Tribes; and

(4) The Commission shall reserve an amount not to exceed five percent of the amounts made available in each fiscal year to make grants for youth corps involvement in Federal disaster relief programs.

§ 2503.4 Selection criteria.

(a) In selecting programs for funding, the Commission will give preference to programs that:

(1) Will provide long-term benefits to the public;

(2) Will instill a work ethic and a sense of public service in the participants;

(3) Will be labor intensive and involve youth operating in crews;

(4) Can be planned and initiated promptly; and

(5) Will enhance skills development, educational level and opportunities, and leadership skills and qualities of participants.

(b) The Commission will also take into consideration:

(1)(i) The quality of the program, based on the program's ability to offer valuable services in the communities where they are needed most and where programs do not exist or where existing volunteer service programs are too limited to meet community needs; to provide productive, meaningful, educational experiences for participants that incorporate service-learning methods; to involve the participants in the design and operation of the program; to involve individuals from diverse backgrounds (including economically disadvantaged youth), who will serve together and explore the root-causes of community problems;

(ii) The quality of leadership and management, as measured by the qualifications of the principal leaders of the program, and the program's plans and processes for recruitment, training, supervision, participant support, evaluation, administration and other key activities;

(2) Innovative aspects of the program, based on the:

(i) Ability of the program to advance knowledge about effective community service in ways that will be broadly applicable beyond the program location; and

(ii) Approach to evaluation and other means of learning from the experience of the program;

(3)(i) Replicability, based on the ability and willingness of the program to assist others in learning from the experience and replicating the approach of the program; and

(4) Sustainability, based on:

(i) Inclusion in a State Comprehensive Plan;

(ii) Strong and broad-based community support for and involvement in the program; and

(5) Evidence that financial resources will be available to continue the program after the expiration of the grant.

(c) In addition, the Commission shall:

(1) Ensure the equitable treatment of both urban and rural areas; and

(2) Fund an equal number of service and conservation corps programs. A corps program performing both conservation and service corps activities shall be considered one conservation corps and one service corps.

(d) Further, in reviewing applications that propose to carry out activities on Federal public lands or Indian lands, the Commission shall consult with the Department of the Interior.

§2503.5 Amount of awards.

The Commission, in determining the amount of a grant to be awarded under this program, shall consider:

(a) The additional number of participants to be served;

(b) The youth unemployment rate, as measured by the U.S. Department of Labor, in the State;

(c) The type of activity proposed to be carried out; and

(d) Other criteria as may be determined by the Commission.

§2503.6 General content of the State application.

(a) All applications submitted to the Commission by the States, under this process, shall include:

(1) A description of any youth corps program the State proposes to operate directly;

(2) A description of any grant program the State proposes to conduct;

(3) The number of individuals currently involved in community service as participants in programs proposed to receive funds under this part (if known);

(4) The number of additional participants and non-participant volunteers expected to become involved in community service under the program (if known);

(5) A description of how non-participant volunteers will assist the program;

(6) The amount of funds required for each fiscal year during the period covered by the application;

(7) A budget of expenditures;

(8) An assurance that the State will comply with the requirements of this chapter;

(9) An assurance that the State will ensure compliance with the Drug-Free Workplace Requirements for Federal Grant Recipients under sections 5153 through 5158 of the Anti-Drug Abuse Act of 1988 (41 U.S.C. 702–707); and

(10) Such other information as specified by the Commission.

(b) A State may operate a program directly with funds provided under this part only if it also uses a reasonable portion of such funds to establish and implement a program to make grants to State and local applicants within the State consistent with the requirements of § 2503.8.

§ 2503.7 Specific content of the State application to operate a program directly.

Each application submitted by a State to operate a youth corps program directly shall include:

(a) A comprehensive description of the objectives and performance goals for the program to be conducted, a plan for managing and funding the program, and a description of the types and duration of training and work experience to be provided by such program;

(b) A plan that will lead to the certification of the training skills acquired by participants as determined by the State and the awarding of academic credit to participants for competencies developed through training programs or work experience;

(c) An age-appropriate learning component for participants that includes procedures that permit participants to reflect on their service experience;

(d) An estimate of the number of participants and crew leaders necessary for the proposed program, the length of time that the services of such participants and crew leaders will be required, the support services needed for participants and crew leaders, and a plan for recruiting participants, including educationally and economically disadvantaged youth, youth with limited basic skills or learning disabilities, youth with disabilities, homeless youth, youth who are in foster care who are becoming too old for foster care, and youth of limited English proficiency;

(e) A list of requirements to be imposed on the sponsoring organizations, such as giving preference to a sponsoring organization that invests in a program receiving assistance under this part (cash contribution or free training to participants), over a sponsoring organization that does not make such an investment;

(f) A description of the manner of appointment and training of sufficient supervisory staff (including participants who have displayed exceptional leadership qualities), to provide for other central elements of a youth corps, such as crew structure and a youth development component;

(g) A description of a plan to ensure the on-site presence of knowledgeable and competent supervisory personnel at program facilities;

(h) A description of the facilities, quarters and board (in the case of residential facilities), limited and emergency medical care, transportation from administrative facilities to work sites, accommodations for individuals with disabilities, and other appropriate services, supplies, and equipment that will be provided by such applicant;

(i) A description of the basic standards of work requirements, health, nutrition, sanitation, and safety, and the manner that such standards shall be enforced;

(j) A description of a plan to assign participants to facilities as near to the homes of such participants as is reasonable and practicable;

(k) An assurance that, prior to the placement of a participant, the program agency will consult with any local labor organization representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by such program;

(l) A description of formal social counseling arrangements to be made available to the participant;

(m) A strategy for ensuring that individuals do not drop out of school for the purpose of participating in a youth corps program;

(n) A plan for ensuring that post-service education and training benefits are used solely for the purposes designated in this part;

(o) A description of any local advisory committee that includes youth and a broad representation from the community; and

(p) Such other information as the Commission may require.

§ 2503.8 Specific content of the State application to conduct a grant program.

Each application submitted by a State to conduct a grant program for the benefit of entities within a State shall include a description of the manner in which:

(a) The State will determine which local applicants receive funding;

(b) Service programs within the State will be coordinated;

(c) Economically and educationally disadvantaged youth, including youth with disabilities, youth with limited basic skills or learning disabilities, youth with limited English proficiency, homeless youth, youth with disabilities, and youth in foster care who are becoming too old for foster care, will be recruited;

(d) Projects that receive assistance will be evaluated concerning performance;

(e) The State will encourage cooperation among programs that receive assistance under this part and the appropriate State job training coordinating council established under the Job Training Partnership Act (29 U.S.C. l501 et. seq.);

(f) Such State will develop a plan for the certification of the training skills acquired by each participant and the awarding of credit to each participant for competencies developed through training programs or work experience obtained under programs that receive assistance under this part;

(g) Prior to the placement of a participant under this part, the State will ensure that program agencies consult with each local labor organization representing employees in the area who are engaged in the same or similar work that is proposed to be carried out by such program; and

(h) Programs will be evaluated for effectiveness in achieving program objectives.

Local Application Process

§ 2503.9 Procedures governing applications to a State to operate a program.

When the State receives an award from the Commission to conduct a grant program, the State will define the contents and procedures to be followed when local applicants apply to the State to operate a project through a grant from the State. In defining the contents of the application and the procedures to be followed, the State must assure that all applicable requirements contained in these regulations are being met, and shall minimize paperwork required of local applicants. The State is not required to issue a formal request for proposals, but should solicit applications from a broad-based group of public and private nonprofit eligible organizations.

§ 2503.10 Procedures for submitting applications to the Commission.

The Commission may consider applications from eligible local applicants located in a State that does not apply for a grant.

§ 2503.11 Contents of a local application submitted directly to the Commission.

In those situations where a State does not apply for a grant from the Commission, and a local applicant chooses to apply directly to the Commission, the contents of the application from a local applicant shall be the same as those specified in § 2503.7.

§ 2503.12 Term of grant.

(a) Grants to States and Indian Tribes shall be for a term of not more than three years.

(b) Grants made by the Commission directly to local applicants shall be for a term of not more than one year.

ALLOWABLE PROGRAM ACTIVITIES

§ 2503.13 Conservation Corps activities.

Projects that receive assistance for conservation corps activities may carry out activities that focus on:

(a) Conservation, rehabilitation, and the improvement of wildlife habitat, rangelands, parks, and recreational areas;

(b) Urban and rural revitalization, historical and cultural site preservation, and reforestation of both urban and rural areas;

(c) Fish culture, wildlife habitat maintenance and improvement, and other fishery assistance;

(d) Road and trail maintenance and improvement;

(e) Erosion, flood, drought, and storm damage assistance and controls;

(f) Stream, lake, waterfront harbor, and port improvement;

(g) Wetlands protection and pollution control;

(h) Insect, disease, rodent, and fire prevention and control;

(i) The improvement of abandoned railroad beds and rights-of-way;

(j) Energy conservation projects, renewable resource enhancement, and recovery of biomass;

(k) Reclamation and improvement of strip-mined land;

(l) Forestry, nursery, and cultural operations;

(m) Making public facilities accessible to individuals with disabilities; and

(n) Housing rehabilitation, renovation, construction, and repair for the purpose of providing affordable housing for low-income and homeless individuals.

§ 2503.14 Youth service corps activities.

Projects that receive assistance for youth service corps activities may carry out activities that include participant service in the following:

(a) State, local, and regional governmental agencies;

(b) Nursing homes, hospices, senior centers, hospitals, local libraries, parks, recreational facilities, child and adult day care centers, programs serving individuals with disabilities, and schools;

(c) Law enforcement agencies, and penal and prohibition systems;

(d) Private nonprofit organizations that primarily focus on social service, such as community action agencies;

(e) Activities that focus on the rehabilitation or improvement of public facilities and neighborhood improvements;

(f) Literacy training that benefits educationally disadvantaged individuals;

(g) Weatherization of, rehabilitation of, construction of, and basic repairs to low-income housing, including housing occupied by older adults, day care, senior citizens, and recreational center facilities, and other community facilities;

(h) Energy conservation (including solar energy techniques);

(i) Removal of architectural barriers to access by individuals with disabilities to public facilities;

(j) Activities that focus on drug and alcohol abuse education, prevention and treatment;

(k) Conservation, maintenance, or restoration of natural resources on publicly held lands; and

(l) Other nonpartisan civic activities and services that are of a substantial social benefit in meeting unmet human, educational, public safety or environmental needs (particularly related to poverty) in the community.

§ 2503.15 Combined eligible activities.

Projects may also carry out activities that encompass the focuses and service described in §§ 2503.13 and 2503.14.

§ 2503.16 Ineligible service categories.

The eligible activities described in §§ 2503.13, 2503.14, and 2503.15 shall not be conducted by any:

(a) Business organized for profit;

(b) Labor union;

(c) Partisan political organization;

(d) Organization engaged in religious activities, unless such activities do not involve the use of funds provided under this part by program participants and program staff to give religious instruction, conduct worship services, or engage in any form of proselytization; or

(e) Domestic or personal service company or organization.

ADMINISTRATIVE AND OTHER PROGRAM REQUIREMENTS

§ 2503.17 Administrative and other expenses.

(a) States may not use more than five percent of the amounts made available for administrative costs.

(b) In addition, a program agency may not:

(1) Use more than five percent of the amount of assistance for administrative costs;

(2) Use more than ten percent of funds for the purchase of major capital equipment;

(3) Use less than ten percent of funds for pre-service and in-service training and educational materials and services for participants; or

(4) Use more than two percent of funds for joint projects with senior citizens organizations.

§ 2503.18 Public lands or Indian lands.

To be eligible to receive assistance, a program must carry out activities on public lands or Indian lands, or result in a public benefit. A program carried out with assistance for conservation, rehabilitation, or improvement of any public lands or Indian lands shall be consistent with:

(a) The provisions of law and policies relating to the management and administration of such lands, and all other applicable provisions of law;

(b) All management, operational, and other plans and documents that govern the administration of such lands; and

(c) Any land or water conservation program (or any related program) administered in any State under the authority of any Federal program is encouraged to use services available under this part to carry out its program.

§ 2503.19 Training and education services.

(a) Assessment of Skills: Each program agency shall assess the educational level of participants at the time of their entrance into the program, using any available records or simplified assessment means or methodology and shall, where appropriate, refer such participants for testing for specific learning disabilities.

(b) Enhancement of Skills: Each program agency shall, through the programs and activities administered under this part, enhance the educational skills of participants.

(c) Provision of Pre-Service and In-Service Training and Education: (1) Program participants shall be provided with information concerning the benefits to the community that result from the activities undertaken by such participants.

(2) A program agency may enter into arrangements with academic institutions or education providers to evaluate the basic skills of participants and to make academic study available to participants to enable such participants to upgrade literacy skills, to obtain high school diplomas or the equivalent of such diplomas, to obtain college degrees, or to enhance employable skills. Such academic institutions or education providers may include:

(i) Local education agencies;

(ii) Community colleges;

(iii) 4-year colleges;

(iv) Area vocational-technical schools; and

(v) Community-based organizations.

(3) Career and education guidance and counseling shall be provided to a participant during a period of the in-service training as described in this part. Each graduating participant shall be provided with counseling with respect to additional study, job skills training or employment and shall be provided job placement assistance where appropriate; and

(4) A program agency shall give priority to participants who have not obtained a high school diploma or the equivalent of such diploma, in providing services under this Section.

(d) Standards and Procedures. Appropriate State and local officials shall certify that standards and procedures with respect to the awarding of academic credit and the certification of educational attainment in programs conducted under paragraph (c) of this section are consistent with the requirements of applicable State and local laws and regulations. These standards

and procedures shall provide that participants:

(1) Will participate in a program that will prepare them to earn a high school diploma or the equivalent (non-high school graduates);

(2) May arrange to receive academic credit in recognition of the education and skills obtained from service satisfactorily completed; and

(3) Will use service-learning methods whenever practicable.

§ 2503.20 Matching requirement.

(a) The Federal share of each grant awarded under this part shall not exceed 75 percent of the cost of the community service activities carried out with each such grant.

(b) The non-Federal share may be in cash (from non-Federal public or private funds) or in-kind.

§ 2503.21 Age, citizenship, and other criteria for enrollment.

(a) Age and Citizenship. (1) Except as provided in paragraph (c) of this section, enrollment in projects that receive assistance under this program shall be limited to individuals who, at the time of enrollment, are:

(i) Not less than 16 years nor more than 25 years of age, except that summer programs may include individuals not less than 15 years of age nor more than 21 years of age at the time of the enrollment of such individuals; and

(ii) Citizens or nationals of the United States or lawful permanent resident aliens of the United States.

(2) A program agency may limit enrollment to any age group within the range specified above.

(b) Participation of Disadvantaged Youth. Programs that receive assistance shall ensure that educationally and economically disadvantaged youth, including youth in foster care who are becoming too old for foster care, youth with disabilities, youth with limited English proficiency, youth with limited basic skills or learning disabilities, and homeless youth, are offered opportunities to enroll.

(c) Special Corps Members. Program agencies may enroll a limited number of special corps members over age 25 so that the corps may draw on their special skills to fulfill the purposes of this Chapter. Projects are encouraged to consider senior citizens as special corps members.

§ 2503.22 Joint projects with senior citizens' organizations.

Program agencies shall use not more than 2 percent of amounts received to conduct joint projects with senior citizens' organizations to enable senior citizens to serve as mentors for youth participants.

§ 2503.23 Use of volunteers.

Program agencies may use volunteer services for purposes of assisting projects and may expend funds made available to provide for services or costs incidental to the utilization of such volunteers, including transportation, supplies, lodging, recruiting, training, and supervision. The use of volunteer services may not result in the displacement of any participant.

§ 2503.24 Post-service benefits.

Program agencies shall provide post-service education and training benefits (such as scholarships and grants) for each participant in an amount that is not in excess of $100 per week, or in excess of $5,000 per year, whichever is less.

§ 2503.25 Living allowance and other benefits.

(a) Full-time service allowance. (1) Each participant in a full-time youth corps program that receives assistance under this Part shall receive a living allowance of not more than 100 percent of the poverty line for a family of two. Program agencies have the flexibility to establish the amount of living allowance in accordance with this part.

(2) Notwithstanding this paragraph, a program agency may provide participants with additional amounts for living expenses that are made available from non-Federal sources.

(b) Adjustment to allowance. A program agency may deduct, from the amounts required to be provided to a participant, a reasonable portion of the costs of the rates for any room and board that is provided for such participant at a residential facility. Such deducted funds shall be deposited into rollover accounts that shall be used

solely to defray the costs of room and board for participants. In addition, the program agency shall establish the amount of the deductions and rates for any room and board after evaluating the costs of providing these services to the participant.

(c) Allowance for quarters. For purposes of section 5911 of title 5, United States Code, relating to allowances for quarters, a participant or crew leader shall be considered an employee of the United States within the meaning of the term ''employee'' as defined in paragraph (a)(3) of that section.

(d) No requirement for a reduction in existing benefits. A program in existence as of November 16, 1990, is not required to decrease any stipends, salaries, or living allowances provided to participants in such program as a result of any of the above requirements, so long as the amount of any such stipends, salaries, or living allowances that is in excess of the levels specified above are paid from non-Federal sources.

(e) Health insurance. In addition to a living allowance, program agencies are encouraged to provide health insurance to each participant in a full-time youth corps program who does not otherwise have access to health insurance.

§ 2503.26 Miscellaneous duties and authorities of program agencies.

(a) *Responsibilities to participant.* A program agency may provide facilities, quarters, and board and shall provide limited and emergency medical care, transportation from administrative facilities to work sites, accommodations for individuals with disabilities, child care and other supportive services, and other appropriate services, supplies, and equipment to each participant.

(b) *Operation of maintenance agreements.* Program agencies may enter into contracts and other appropriate arrangements with local government agencies and nonprofit organizations for the operation or management of any projects or facilities under the program.

(c) *Coordination.* Program agencies shall coordinate their projects with related Federal, State, local, and private activities.

(d) *Limitation on placement.* No participant shall perform any specific activity for more than a six-month period. No participant shall remain enrolled in programs assisted under this part for more than 24 months.

§ 2503.27 Health and safety standards.

(a) Program agencies shall establish and meet standards and enforcement procedures concerning the health and safety of participants for all projects, consistent with Federal, State, and local health and safety standards.

(b) Due to the wide variety of eligible activities and locations in which these activities may be performed, the Commission will not set separate standards for these programs. The Commission requires that program agencies meet the existing Federal, State, and local health and safety standards that would otherwise be applicable to the particular location of the project and the activity being performed if the activity were performed by regular employees of the program.

§ 2503.28 Federal and State employee status.

(a) *General Responsibility.* Participants and crew leaders shall be responsible to, or be a responsibility of, the program agency administering the program on which such participants, crew leaders, and volunteers work.

(b) *General Treatment as a Non-Federal Employee.* Except as otherwise provided under paragraphs (c) and (d) of this Section, a participant or crew leader in a program that receives assistance shall not be considered a Federal employee and shall not be subject to the provisions of law relating to Federal employment.

(c) *Work-Related Injury.* A participant or crew leader serving in a program that receives assistance shall be considered an employee of the United States, within the meaning of the term *employee* as defined in section 8101 of title 5, United States Code, for the purposes of subchapter I of chapter 81 of title 5, United States Code, relating to the compensation of Federal employees for work injuries. The provision of that subchapter shall apply, except:

(1) The term *performance of duty*, as used in such subchapter, shall not include an act of a participant or crew leader while absent from the assigned post of duty of such participant or crew leader, except while participating in an activity authorized by or under the direction and supervision of a program agency, (including an activity while on pass or during travel to or from such post of duty);

(2) Compensation for disability shall not begin to accrue until the day following the date that the employment of the injured participant or crew leader is terminated; and

(3) In computing compensation benefits for disability or death, the annual rate of pay of a full-time participant shall be deemed to be such entry salary for a grade GS–5 employee, and the annual rate of pay of a participant enrolled for a period of summer service shall be deemed to be 25 percent of such entry salary.

(d) *Tort Claims Procedure.* For purposes of chapter 171 of title 28, United States Code, relating to tort claims procedure, a participant or crew leader assigned to a youth corps program for which a grant has been made to, or other appropriate arrangement entered into with, the Secretary of Agriculture, Secretary of the Interior, or the Director of ACTION, shall be considered an employee of the United States within the meaning of the term ''employee of the government'' as defined in 28 U.S.C. 2671.

PART 2504—NATIONAL AND COMMUNITY SERVICE PROGRAMS

Sec.

AUTHORITY: 42 U.S.C. 12501 et seq.

SOURCE: 57 FR 5311, Feb. 13, 1992, unless otherwise noted.

§ 2504.1 General.

The Commission will make grants for the creation of full- and part-time national and community service programs.

§ 2504.2 Eligibility to receive grants.

States and Indian Tribes are eligible to receive grants under this part. For the purposes of this part, the definition of State includes Indian Tribes.

§ 2504.3 Eligibility to participate in a program funded under this part.

(a) Part-Time: (1) An individual may serve in a part-time national service program under this part if the individual:

(i) Is 17 years of age or older; and

(ii) Is a citizen of the United States or lawfully admitted for permanent residence.

(2) In selecting applicants for a part-time program, States must give priority to applicants who are currently employed.

(b) An individual may serve in a full-time national service program under this part if the individual:

(1) Is 17 years of age or older;

(2) Has received a high school diploma or the equivalent of such diploma, or agrees to achieve a high school diploma or the equivalent of such while participating in the program; and

(3) Is a citizen of the United States or lawfully admitted for permanent residence.

(c) An individual may serve as a special senior service participant under this part if the individual:

(1) Is 60 years of age or older; and

(2) Meets any additional eligibility criteria for special senior service participation established by the Commission.

§ 2504.4 State application.

(a) An application for funds under this part made by a State, must contain:

(1) The amount of funds requested for each fiscal year during the period covered by the State proposal;

(2) An assurance that the State will comply with the requirements of this Chapter and this part;

(3) A budget of estimated expenditures;

(4) The amount of Federal, State, and local public funds expended for services of the type assisted under this Chapter in the previous fiscal year;

(5) The State proposal, as required by §2504.6 of this part;

(6) The number of individuals currently involved in community service part-time or full-time as participants in programs proposed to receive funds under this part (if applicable);

(7) The number of additional part-time, full-time, and special senior service participants and non-participant volunteers expected to become involved in community service under the program;

(8) Describe how non-participant volunteers will assist the program; and

(9) Such other information as specified by the Commission.

(b) Applications must be submitted annually at such time and in such manner as prescribed by the Commission.

§2504.5 Assurances.

The State proposal must include assurances that:

(a) The State will keep such records and provide such information to the Commission as may be required for fiscal audits and program evaluation;

(b) The State will ensure that the uses of post-service benefits described in §2504.10 of this part are limited to the uses specified in §2504.11 of this part;

(c) Prior to the placement of a participant, the State will consult with any local labor organization representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by such program;

(d) Prior to the placement of a participant, the State will consult with employees at the proposed project site who are engaged in the same or similar work as that proposed to be carried out by such program;

(e) The State will ensure that any entity carrying out program functions pursuant to grant or contract will comply with the provisions of this chapter and part;

(f) The State will provide to each participant enrolled in a full-time program in-service educational services and materials to enable such participant to obtain a high school diploma or the equivalent of such diploma;

(g) The State will cooperate in arranging and conducting the three-week training provided to participants by the Commission; and

(h) The State will comply with the requirements of the Drug-Free Workplace Requirements for Federal Grant Recipients under section 5153 through 5158 of the Anti-Drug Abuse Act of 1988 (41 U.S.C. 401–707).

§2504.6 State proposal.

The State proposal must include the following information:

(a) A description of the State administrative plan for the implementation of a program with assistance provided under this part, including such functions, if any, that will be carried out by public or private nonprofit organizations pursuant to a grant or contract;

(b) A description of the manner in which an ethnically and economically diverse group of participants, including economically and educationally disadvantaged individuals, college-bound youth, individuals with disabilities, youth in foster care who are becoming too old for foster care, and employed individuals, shall be recruited and selected for participation in a program receiving assistance under this part;

(c) Whether the program will enroll individuals who have completed undergraduate education or specialized post-secondary training and whose training and skills enable them to provide needed services in the State;

(d) A description of the procedures for training supervisors and participants in skills relevant to the work to be conducted and for supervising and organizing participants in such program;

(e) A description of the procedures to ensure that the program provides participants with an opportunity to reflect on their service experience;

(f) A plan for providing full-time participants with educational services required in §2504.5(f) of this part;

(g) A description of the geographical areas within the State in which the program would be operated to provide the optimum match between the need for services and the anticipated supply of participants;

(h) A description of the plan for placing the participants in teams or making individual placements in the programs;

(i) A description of the anticipated number of full- and part-time participants and special senior service members in such program;

(j) A plan for the recruitment and selection of sponsoring organizations that will receive participants under the programs that receive assistance under this part;

(k) A description of the procedures for matching the participants with the sponsoring organizations;

(l) A description of the procedures to be used to assure that sponsoring organizations that are not matched with participants shall be provided with information concerning the VISTA program and the Older American Volunteer Programs;

(m) The budget for the program, including anticipated public and private funding;

(n) A plan for evaluating the program and assurances that the State will fully cooperate with any evaluation undertaken by the Commission;

(o) The assurances required in § 2504.5 of this part; and

(p) Any other information required by the Commission.

§ 2504.7 Reservation of funds.

Not more than five percent of funds received under this part shall be used for administrative costs for any fiscal year.

§ 2504.8 Types of service.

A participant in a program that receives assistance under this part shall perform national service to meet unmet educational, human, environmental, and public safety needs, especially those needs relating to poverty.

§ 2504.9 Terms of service.

(a)(1) An individual performing part-time national service under this part shall agree to perform community service as a participant in the program for not less than 3 years unless the individual is unable to complete the term of service for reasons provided in paragraph (b) of this section.

(2) An individual performing full-time national service under this part shall agree to perform community service as a participant in the program for not less than 1 year nor more than 2 years, at the discretion of such individual, unless the individual is unable to complete the term of service for reasons provided in paragraph (b) of this section.

(3) A special senior service participant performing national service under this part shall serve for any period of time as determined by the State.

(b) If the State releases a participant from completing a term of service in a program receiving assistance under this part for compelling personal circumstances as demonstrated by the participant, or if the program in which the participant serves does not receive continual funding for any reason, the State may provide such participant with that portion of the financial assistance described in paragraph (a) of this section that corresponds to the quantity of the service obligation completed by such individual.

(c)(1) A participant performing part-time national service under this part shall serve for:

(i) 2 weekends each month and 2 weeks during the year; or

(ii) An average of 9 hours per week each year in increments determined by the State;

(2) A participant performing full-time national service under this part shall participate in activities of the program for not less than 40 hours per week each year of service, including such holidays and vacation periods as designated by the program.

(3) A special senior service participant performing national service under this part shall serve either part- or full-time as permitted by the State.

§ 2504.10 Value of post-service benefits.

(a)(1) The Commission, through the State, will annually provide to each part-time participant a non-transferrable post-service benefit equal

in value to $1,000 for each year of service that such participant provides to the program. Funds for this benefit shall be included in the budget for the program and reflected in the grant request.

(2)(i) The State shall annually provide to each part-time participant from non-Federal public or private funds a nontransferrable post-service benefit that is equal in value to $1,000 for each year of service that such participant provides to the program.

(ii) A State may apply for a waiver to reduce the amount of the post-service benefit to an amount that is equal to not less than the average annual tuition and required fees at four year public institutions of higher education within such State. Such waivers will be granted if the Commission determines that such waiver would be equitable due to lack of resources in the State.

(b)(1) The Commission, through the State, shall annually provide to each full-time participant a nontransferrable post-service benefit that is equal in value to $2,500 for each year of service that such participant provides to the program. Funds for this benefit shall be included in the budget for the program and reflected in the grant request.

(2)(i) The State shall annually provide from non-Federal public or private funds to each full-time participant a nontransferrable post-service benefit that is equal in value to $2,500 for each year of service that such participant provides to the program.

(ii) A State may apply for a waiver to reduce the amount of the post-service benefit to an amount that is equal to not less than the average annual tuition, required fees, and room and board costs at four year public institutions of higher education within such State. Such waiver will be granted if the Commission determines that such waiver would be equitable due to a lack of resources in the State.

(c) Nothing in this part shall be construed to prevent a State from using funds made available from non-Federal sources to increase the amount of post-service benefits to an amount in excess of that described in this part.

(d) A special senior service participant shall be ineligible to receive post-service benefits under this part.

(e) The Commission will increase the value of post-service benefits provided under this part in each fiscal year based on the increase in the costs associated with attending a four year institution of higher education during that fiscal year. The Commission will determine such increases in costs based on information made available by the Bureau of Labor Statistics and the National Center for Education Statistics.

§ 2504.11 Uses of post-service benefits.

(a) A post-service benefit for a part-time participant provided under § 2504.10(a) of this part shall only be used for:

(1) Payment of a student loan from Federal or non-Federal sources;

(2) Down-payment or closing costs associated with purchasing a first home; or

(3) Tuition at an institution of higher education on a fulltime basis, or to pay the expenses incurred in the full-time participation in an apprenticeship program approved by the appropriate State agency.

(b) A post-service benefit for a full-time participant provided under § 2504.10(b) of this part shall only be used for:

(1) Payment of a student loan from Federal or non-Federal sources; or

(2) Tuition, room and board, books and fees, and other costs associated with attendance (pursuant to section 472 of the Higher Education Act of 1965 (20 U.S.C. 108711)) at an institution of higher education on a full-time basis, or to pay the expenses incurred in the full-time participation in an apprenticeship program approved by the appropriate State agency.

§ 2504.12 Living allowance.

(a)(1) Each participant in a full-time program that receives assistance under this part shall receive a living allowance of not more than 100 percent of the poverty line for a family of two. Program agencies have the flexibility to establish the amount of living allowance in accordance with this part.

(2) Notwithstanding paragraph (a)(1) of this section, a program agency may

provide participants with additional amounts that are made available from non-Federal sources.

(b) Nothing in this section shall be construed to require a program in existence on November 16, 1990, to decrease any stipends, salaries, or living allowances provided to participants under such program.

(c) In addition to the living allowances provided under paragraph (a) of this section, grantees are encouraged to provide health insurance to each participant in a full-time national service program who does not otherwise have access to health insurance.

(d)(1) Each full-time special senior service participant shall receive a living allowance equal to the living allowance provided to full-time participants under paragraph (a) of this Section and such other assistance as the Commission considers necessary and appropriate for a special senior service participant to carry out the service obligation of such participant.

(2) Each part-time special senior service participant shall receive a living allowance equal to a share of such allowance offered to a full-time special senior service participant under paragraph (d)(1) of this section, that has been prorated according to the number of hours such part-time participant serves in the program, and such other assistance as the Commission considers necessary and appropriate for a special senior service participant to carry out the service obligation of such participant.

§ 2504.13 Criteria for evaluating applications.

(a) ln determining whether to award a grant, the Commission will consider:

(1) The ability of the proposed program to serve as an effective model for a large-scale national service program;

(2) The quality of the application, including the plan for training, recruitment, placement, and data collection;

(3) The extent that the program builds on existing programs; and

(4) The expedience with which the State proposes to make the program operational.

(b) The Commission will also consider:

(1)(i) The quality of the program, based on the program's ability to offer valuable services in the communities where they are needed most and where programs do not exist or where existing volunteer service programs are too limited to meet community needs; to provide productive, meaningful, educational experiences for participants that incorporate service-learning methods; to involve the participants in the design and operation of the program; to involve individuals from diverse backgrounds (including economically disadvantaged youth) who will serve together and explore the root-causes of community problems; and to prepare the participants for future volunteer service leadership.

(ii) The quality of leadership and management, as measured by the qualifications of the principal leaders of the program and plans and processes for recruitment, training, supervision, participant support, evaluation, administration and other key activities.

(2) Innovative aspects of the program, based on the:

(i) Ability of the program to advance knowledge about effective community service in ways that will be broadly applicable beyond the program location; and

(ii) Approach to evaluation and other means of learning from the experience of the program;

(3)(i) Replicability, based on the ability and willingness of the program to assist others in learning from the experience and replicating the approach of the program; and

(4) Sustainability, based on:

(i) Inclusion in a State Comprehensive Plan;

(ii) Significant bipartisan, nonpartisan, or other broad-based support for and involvement in the program; and

(iii) Evidence that financial resources will be available to continue the program after the expiration of the grant.

(c) In addition, the Commission shall ensure that programs receiving assistance under this part are geographically diverse and include programs in both urban and rural areas.

§ 2504.14 Program training.

(a) Each participant shall receive three weeks of training provided by the Commission in cooperation with the State.

(b) Each training session described above will:

(1) Orient each participant in the nature, philosophy, and purpose of the program; and

(2) Build an ethic of community service, and the assigned program task of each participant by providing:

(i) General training in citizenship and civic and community service; and

(ii) If feasible, specialized training for the type of service that each participant will perform.

(c) The State may provide additional training as the State determines necessary.

(d) Each sponsoring agency will also train participants in skills relevant to the work to be conducted.

PART 2505—INNOVATIVE AND DEMONSTRATION PROGRAMS

Subpart A—General

Sec.
2505.1 Limitation on grants.

Subpart B—Governors, Innovative Service Programs

2505.10 Purpose.
2505.11 Projects to be funded.
2505.12 Application contents.
2505.13 Selection criteria.

Subpart C—Peace Corps and VISTA Training Programs

2505.20 Purpose.
2505.21 Eligibility.

Subpart D—Rural Youth Service Demonstration Project

2505.30 Purpose.
2505.31 Designation of rural areas.
2505.32 Eligibility.
2505.33 Projects to be funded.
2505.34 Allowable uses of funds.
2505.35 Selection criteria.

Subpart E—Assistance for Head Start

2505.40 Purpose.
2505.41 Eligibility.
2505.42 Applicable requirements.
2505.43 Relationship with ACTION.
2505.44 Selection Criteria.

Subpart F—Employer-based Retiree Volunteer Programs

2505.50 Purpose.
2505.51 Eligibility.
2505.52 Projects to be funded.
2505.53 Selection criteria.

AUTHORITY: 42 U.S.C. 12501 et seq.

SOURCE: 57 FR 5314, Feb. 13, 1992, unless otherwise noted.

Subpart A—General

§ 2505.1 Limitation on grants.

Given the availability of funds, the Commission shall make grants for no fewer than three programs, as specified in subparts under this part.

Subpart B—Governors, Innovative Service Programs

§ 2505.10 Purpose.

This program is to support the creation of innovative volunteer and community service programs by providing assistance for certain service and demonstration activities as well as support functions such as training, technical assistance, and evaluation.

§ 2505.11 Projects to be funded.

The Commission may provide assistance through a general grant to States to support one or more of the following activities:

(a) Enhancements to existing volunteer and community service programs;

(b) Demonstration programs;

(c) Research concerning, and evaluation of, service programs;

(d) Coordination of service programs;

(e) Technical assistance;

(f) Training and staff development; and

(g) Collection and dissemination of information concerning service programs.

§ 2505.12 Application contents.

Applications proposing to perform activities under this subpart must contain:

(a) A description of the proposed program;

(b) A description of the human, educational, environmental or public safety service that participants will perform and the State or community need that will be addressed;

(c) A description of the target population of participants and how they will be recruited;

(d) A description of the procedures for training supervisors and participants and for supervising and organizing participants;

(e) A description of the procedures to ensure that the proposed program provides participants with an opportunity to reflect on their service experiences;

(f) An assurance that, prior to the placement of a participant in the program, the applicant will consult with any local labor organization representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by the program;

(g) The number of individuals currently involved in community service as participants in programs proposed to receive funds under this part (if applicable);

(h) The number of additional participants and non-participant volunteers expected to become involved in community service under the program;

(i) A description of how non-participant volunteers will assist the program;

(j) An assurance that, prior to the placement of a participant in the program, the applicant will consult with employees at the proposed program site who are engaged in the same or similar work as that proposed to be carried out by the program;

(k) A description of the budget of the program;

(l) The amount of funds requested for each fiscal year during the period covered by the application;

(m) An assurance that the State will comply with requirements of this chapter and this part;

(n) An assurance that the State will ensure compliance with the Drug-Free Workplace Requirements for Federal Grant Recipients under sections 5153 through 5158 of the Anti-Drug Abuse Act of 1988 (41 U.S.C. 702–707); and

(o) Such other information as specified by the Commission.

§ 2505.13 Selection criteria.

The Commission makes awards under this program on the basis of the criteria specified below. The Commission determines the following in evaluating applications:

(a) Ability of the proposed program to serve as an effective model, including demonstrating the effectiveness of results;

(b) Quality of the plan of operation and staffing, including the quality of the management plan, adequacy of the proposed budget in relation to objectives, evaluation plan, and qualifications and capability of any staff assigned to the project;

(c) Extent to which the proposed program builds on existing programs, including both expanding services and improving their quality;

(d) The demonstrated innovation of the program in responding to one or more of the following needs: human, educational, environmental, and public safety;

(e) The demonstrated ability to achieve the goals of this Chapter; and

(f) Inclusion in a State Comprehensive Service Plan.

Subpart C—Peace Corps and VISTA Training Programs

§ 2505.20 Purpose.

The purpose of this demonstration program is to provide certain training and education benefits for potential VISTA and Peace Corps volunteers.

§ 2505.21 Eligibility.

The Commission may make grants to, or enter into other appropriate arrangements with, the Director of the Peace Corps and/or the Director of ACTION to carry out this program. The Director of the Peace Corps and/or the Director of ACTION are responsible, either directly or by way of grant, contract, or other arrangement, to carry out the provisions specified in sections 161, 162, and 163 of the Act. Any regulation determined necessary to qovern the implementation of these provisions will be issued by the Director of ACTION and/or the Director of the Peace Corps.

Subpart D—Rural Youth Service Demonstration Project

§ 2505.30 Purpose.

The purpose of this program is to support demonstration projects in rural areas involving youth volunteers.

§ 2505.31 Designation of rural areas.

For the purposes of this subpart, a rural area is:

(a) Open country which is not part of or associated with an urban area;

(b) Any town, village, city or place, including the immediately adjacent densely settled area, which is not part of or associated with an urban area and which:

(1) Has a population not in excess of 10,000 if it is rural in character; or

(2) Has a population in excess of 10,000 but not in excess of 20,000 and is not contained within a Metropolitan Statistical Area.

§ 2505.32 Eligibility.

For the purposes of this subpart, States, local governments, and public and private nonprofit organizations are eligible to receive awards as specified in the FEDERAL REGISTER announcing the availability of funds for this program.

§ 2505.33 Projects to be funded.

The Commission will support demonstration projects providing education, human, environmental, and public safety service performed by students, school dropouts, and out-of-school youth, in rural areas, including services for the elderly, assisted living services for the elderly and individuals with disabilities, and services targeted at the needs of low-income individuals in the community.

§ 2505.34 Allowable uses of funds.

Grantees may use funds provided under this program to support and operate the demonstration project.

§ 2505.35 Selection criteria.

The Commission makes awards under this program on the basis of the criteria specified below. The Commission shall determine the following in evaluating applications:

(a) The quality of the plan of operation and staffing, including the quality of the management plan, adequacy of the proposed budget in relation to the objectives, evaluation plan, and qualifications and capability of any staff assigned to the project;

(b) The ability of the proposed program to address the particular needs of assisted individuals in rural areas;

(c) The innovation of the program; and

(d) The demonstrated ability to achieve the goals of this chapter.

Grantees may use funds provided under this program to support and operate the demonstration project.

Subpart E—Assistance for Head Start

§ 2505.40 Purpose.

The purpose of this program is to increase the number of low-income individuals who provide services under the Foster Grandparent program to children who participate in Head Start programs.

§ 2505.41 Eligibility.

Only those organizations which have a grant from ACTION, the Federal Domestic Volunteer Agency, to operate a Foster Grandparent program, are eligible to receive awards.

§ 2505.42 Applicable requirements.

Grantees' activities under this program are limited to the support of children who participate in Head Start programs.

§ 2505.43 Relationship with ACTION.

The Commission, at its discretion and with the concurrence of the Director of ACTION, may enter into an agreement to issue awards under this program through ACTION. If this agreement is applicable in any given year, the terms of the agreement will define the award process, and eligible applicants will be informed of the process through the notice of funding availability.

§ 2505.44 Selection criteria.

The Commission shall make grants under this program on the basis of the

criteria specified below. The Commission shall consider the following in evaluating applications:

(a) The effectiveness of the project in addressing the needs of children enrolled in Head Start programs;

(b) The quality of the plan of operation and staffing, including the quality of the management plan, adequacy of the proposed budget in relation to objectives, and qualifications and capability of any staff assigned to the program;

(c) The demonstrated innovation of the program;

(d) The percentage of children in need not currently served by the program in the community;

(e) The unavailability of alternate funding sources to applicants; and

(f) The demonstrated ability to achieve the goals of this.

Subpart F—Employer-based Retiree Volunteer Programs

§ 2505.50 Purpose.

The purpose of the program is to provide support to bring together retirees, their former employers, and community agencies to develop employer-based retiree volunteer programs.

§ 2505.51 Eligibility.

Public and private nonprofit organizations are eligible to receive awards.

§ 2505.52 Projects to be funded.

The Commission will support projects involving retirees, their former employers, and community agencies engaged in volunteer activities.

§ 2505.53 Selection criteria.

The Commission makes awards under this program on the basis of the criteria specified below. The Commission shall consider the following in evaluating applications:

(a) The effectiveness of the program in addressing the needs of the community;

(b) The quality of the plan of operation and staffing, including the quality of the management plan, adequacy of the proposed budget in relation to objectives, and qualifications and capability of any staff assigned to the project;

(c) The demonstrated innovation of the program;

(d) The effectiveness of the program in involving retirees, their former employers, and community organizations in working together to address the needs of the local community; and

(e) The demonstrated ability to achieve the goals of this.

PART 2506—ADMINISTRATIVE REQUIREMENTS

Subpart A—Program Specific Requirements

Sec.

AUTHORITY: 42 U.S.C. 12501 et. seq.

SOURCE: 57 FR 5316, Feb. 13, 1992, unless otherwise noted.

Subpart A—Program Specific Requirements

§ 2506.1 Reporting specific requirements.

(a) Requirement for State reports. (1) Each State receiving assistance under this Chapter shall prepare and submit to the Commission an annual report concerning the use of Federal funds under this Chapter and the status of national and community service programs in the State; and

(2) The report shall include information demonstrating compliance with the provisions of this chapter, including §§ 2501.5(a)(9) and 2506.2, and any additional information requested by the Commission.

(b) Requirement for Reports from Local Grantees to the State. In order to meet the requirement in § 2506.1(a), each State may require local grantees

to supply such information as is necessary, including a comparison of actual accomplishments with the goals established for the program, the number of participants, the number of service hours generated, and the existence of any problems, delays, or adverse conditions that have affected or will affect the attainment of program goals. In addition, local grantees may be asked to provide information to the State demonstrating compliance with the provisions of the chapter.

(c) Requirement for Reports from Local Grantees Receiving Grants Directly From the Commission. If a local grantee, including an institution of higher education, has received a grant directly from the Commission, the local grantee will be required to provide directly to the Commission a report concerning the use of Federal funds under this chapter, and such other information as is necessary, including a comparison of actual accomplishments with the goals established for the program, the number of participants, the number of service hours generated, and the existence of any problems, delays, or adverse conditions that have affected or will affect the attainment of program goals. In addition, local grantees may be asked to provide information to the Commission demonstrating compliance with the provisions of the chapter.

(d) Availability of report. Reports submitted to the Commission by the States and local grantees shall be made available to the public upon request.

§2506.2 Supplementation, nonduplication, and nondisplacement.

(a) *Supplementation.* (1) Recipients of funds under this Chapter are advised that such funds are to be used only to supplement, not supplant, State and local public funds expended for services of the type assisted under this Chapter in the previous fiscal year.

(2) Paragraph (a) of this section shall be satisfied, with respect to a particular program, if the aggregate expenditure for such program for the fiscal year in which services are to be provided will not be less than the aggregate expenditure for such program in the previous fiscal year, excluding the amount of Federal assistance provided and any other amounts used to pay the remainder of the costs of programs assisted under this chapter.

(b) *Nonduplication.* (1) In general, funds may be used only for a program that does not duplicate, and is in addition to, an activity performed by paid employees in the locality being served by the program; this requirement shall not be construed to bar the replication of an exemplary volunteer or community service program; and

(2) Assistance made available under this chapter shall not be provided to a private nonprofit entity to conduct activities that are the same or substantially equivalent to activities provided by a State or local government agency that such entity resides in, unless the requirements of paragraph (c) of this section are met.

(c) *Nondisplacement.* Further, an employer shall not displace an employee or position, including partial displacement such as reduction in hours, wages, or employment benefits, as a result of the assistance used by the employer of a participant in a program funded under this chapter. A service opportunity may not infringe in any manner on the promotional opportunity of an employed individual. Services may not be performed that would supplant the hiring of employed workers or would otherwise be performed by an employee, including an employed worker who recently resigned or was discharged; an employee who is subject to a reduction in force; an employee who is on leave (terminal, temporary, vacation, emergency, or sick); or an employee who is on strike or who is being locked out.

§2506.3 Suspension or termination of payments.

(a) *General.* The Commission may, in accordance with the provisions of this chapter, suspend or terminate payments under a grant or contract awarded under this chapter whenever the Commission determines there is a material failure, or threat of failure, to comply with the applicable terms and conditions of the grant or contract or to protect the fiduciary interests of the government.

(b) *Summary action.* In emergency situations, the Commission may summarily suspend a grant or contract for not more than 30 days. Examples of emergency situations that would allow such action are serious risk to persons or property; violations of Federal, State, or local criminal statutes; or material violations of the grant or contract that are sufficiently serious that they outweigh the general policy in favor of advance notice and opportunity to show cause.

(c) *Suspension or termination notice.* The Commission shall notify a recipient by letter or telegram that the Commission intends to suspend or terminate assistance either in whole or in part unless the recipient shows good cause why such assistance should not be suspended. In this communication, the grounds and the effective date for the proposed suspension or termination shall be described. The recipient shall be given at least 7 calendar days to submit written material in opposition to the proposed action.

(d) *Hearings.* The recipient may request a hearing on a proposed suspension or termination. With 5 days notice to the recipient, the Commission may authorize the conduct of a hearing or other meeting, at a location convenient to the recipient, to consider the proposed suspension or termination. A transcript or recording shall be made of such a hearing or meeting and it shall be available for inspection by any individual.

(e) *Decision.* The Commission's decision on suspension or termination of a grant or contract shall be final and shall be delivered by letter or telegram.

§ 2506.4 Grievance procedure.

(a) *General.* State and local applicants that receive assistance under this chapter shall establish and maintain a procedure to adjudicate grievances from participants, labor organizations, and other interested individuals concerning programs that receive assistance under this chapter. Such grievances may include proposed placements of participants in projects receiving assistance.

(b) *Deadline for grievances.* Except for a grievance that alleges fraud or criminal activity, a grievance shall be made not later than 1 year after the date of an alleged occurrence.

(c) *Deadline for hearing and decision.* If a hearing is held on a grievance, it shall be conducted no later than 30 days from the date of the filing of the grievance. A decision shall be made not later than 60 days from the date of the filing of the grievance.

(d) *Arbitration.* When there is an adverse decision on a grievance, or 60 days after the filing of a grievance if no decision has been reached, the party filing the grievance shall submit the grievance to binding arbitration before a qualified arbiter who is jointly selected and independent of the interested parties. Any resulting proceedings shall be held no later than 45 days after the request for arbitration, with a decision made not later than 30 days after the date of the proceeding. The cost of arbitration shall be divided evenly between the parties to the arbitration.

(e) *Proposed placement.* If a grievance is filed regarding a proposed placement of a participant in a program that receives assistance under this chapter, such placement shall not be made unless it is consistent with the resolution of the grievance in accordance with the requirements of this part.

(f) *Remedies.* Remedies for a grievance filed under this part include suspension or termination of payments for assistance under this chapter Act, and prohibition of a placement of a participant described in paragraph (e) of this section.

§ 2506.5 Prohibition on use of funds for certain purposes.

(a) *Prohibited uses.* No assistance made available under a grant under this chapter shall be used to provide religious instruction, conduct worship services, or engage in any form of proselytization.

(b) *Political activity.* Assistance provided under this chapter shall not be used by program participants and program staff to:

(1) Assist, promote, or deter union organizing; or

(2) Finance, directly or indirectly, any activity designed to influence the

outcome of an election to Federal office or the outcome of an election to a State or local public office.

(c) *Contracts or collective bargaining agreements.* A project that receives assistance under this chapter shall not impair existing contracts for services or collective bargaining agreements.

§2506.6 Standards of conduct.

Programs that receive assistance under this chapter shall establish and stringently enforce standards of conduct at the program site to promote proper moral and disciplinary conditions.

§2506.7 Treatment of benefits.

Living allowances and post-service benefits provided to individuals participating in programs under this chapter shall not be considered as income for the purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or federally assisted program based on need, other than programs under the Social Security Act.

§2506.8 Program evaluation.

(a) *General.* The Commission has broad responsibility for the continuing evaluation of programs receiving assistance under this chapter. In turn, program participants, States, and local grantees have the responsibility to provide information to the Commission as required by the Commission in order to evaluate programs and projects funded under this chapter. State and local grantees may be required to assist in the selection of, and collection of information about, control groups of individuals who are not selected to participate in funded programs.

(b) Standards for the evaluation of program effectiveness. (1) All funded programs will be evaluated based on their effectiveness in achieving any or all of the goals of this chapter.

(2) Specific evaluation standards for each of these broad goals will be established by the Commission and made available to funded programs and the public.

(c) Program objectives. Programs receiving funds under part 2504 will be evaluated to determine their effectiveness in:

(1) Recruiting and enrolling diverse participants in such programs based on economic background, race, ethnicity, gender, age, marital status, education levels, and ability and disability;

(2) Promoting the educational achievement of each participant based on earning a high school diploma or its equivalent and the future enrollment and completion of increasingly higher levels of education;

(3) Encouraging each participant to engage in public and community service after completing of the program based on career choices and service in other service programs such as VISTA, the Peace Corps, the military, and part-time volunteer service;

(4) Promoting positive attitudes among each participant regarding the participant's role in solving community problems, ability to improve the lives of others, sense of responsibilities as a citizen and community member, and other factors;

(5) Enabling participants to finance a lesser portion of their higher education through student loans;

(6) Providing services and projects that benefit the community;

(7) Supplying additional volunteer assistance to community agencies without overloading such agencies with more volunteers than can be utilized effectively;

(8) Providing service and activities that could not otherwise be performed by employed workers and that will not supplant the hiring of, or result in the displacement of, employed workers or impair the existing contracts of such workers; and

(9) Attracting a greater number of citizens to public service, including service in the active and reserve components of the Armed Forces, the National Guard, the Peace Corps, VISTA, and the Older American Volunteer Programs.

(d) The Commission shall keep confidential the information acquired about individual participants or members of control groups from evaluations under paragraph (c) of this section.

§2506.9 Treatment of living allowances.

Living allowances received under this chapter shall not be considered in

the determination of expected family contribution or independent student status under subpart 1 of part A of title IV, and part F of title IV, of the Higher Education Act of 1965.

PART 2510—OVERALL PURPOSES AND DEFINITIONS

Sec.

AUTHORITY: 42 U.S.C. 12501 *et seq.*

§ 2510.10 What are the purposes of the programs and activities of the Corporation for National and Community Service?

The National and Community Service Trust Act of 1993 established the Corporation for National and Community Service (the Corporation). The Corporation's mission is to engage Americans of all ages and backgrounds in community-based service. This service will address the Nations educational, public safety, human, and environmental needs to achieve direct and demonstrable results. In doing so, the Corporation will foster civic responsibility, strengthen the ties that bind us together as a people, and provide educational opportunity for those who make a substantial commitment to service. The Corporation will undertake activities and provide assistance to States and other eligible entities to support national and community service programs and to achieve other purposes consistent with its mission.

[59 FR 13783, Mar. 23, 1994]

§ 2510.20 Definitions.

The following definitions apply to terms used in 45 CFR parts 2510 through 2550:

Act. The term *Act* means the National and Community Service Act of 1990, as amended (42 U.S.C. 12501 *et seq.*).

Administrative costs. The term *administrative costs* means expenses associated with the overall administration of a Corporation funded program. These costs relate to the support of a programs general operations and not to expenses identified with a specific program or project.

(1) Administrative costs include, but are not limited to, the following: (i) Indirect costs (i.e., costs identified with two or more cost objectives but not identified with a particular cost objective) as described in Office of Management and Budget Circulars A–21 (Cost Principles for Educational Institutions), A–87 (Cost Principles for State and local Governments), and A–122 (Cost Principles for Nonprofit Organizations) that provide guidance on indirect costs to Federal agencies. Copies of Office of Management and Budget Circulars are available from the Executive Office of the President Publications, 725 17th Street, NW., room 2200, New Executive Office Building, Washington, DC 20503.

(ii) Costs for financial, accounting, auditing, internal evaluations (except as in paragraph (2)(iii) of this definition), and contracting functions.

(iii) Costs for insurance that protects the entity that operates the program.

(iv) The portion of the salaries and benefits of the director and any other program administrative staff equal to the portion of time that is not spent in support of specific project objectives. Specific project objectives means recruiting, training, placing, or supervising participants.

(2) Administrative costs do not include allowable costs directly related to program or project operations. These program costs include the following: (i) Costs for participants, including living allowances, insurance payments, and expense for training and travel.

(ii) Costs for staff who recruit, train, place, or supervise participants, including costs for staff salaries, benefits, training, and travel, if the purpose is for a specific program or project objective.

(iii) Costs for independent evaluations and internal evaluations—the latter to the extent that the evaluations cover only the funded program or project and are specifically related to creative methods of quality improvement. (Overall organizational management improvement costs are administrative costs.) (See § 2516.810 and § 2522.510 for definition of independent and internal evaluations.)

(3) Particular costs, such as those associated with staff who perform both administrative and program functions, may be prorated between administrative and program costs if included in the budget and approved by the Corporation grants officer.

Adult Volunteer. (1) The term *adult volunteer* means an individual, such as an older adult, an individual with disability, a parent, or an employee of a business of public or private nonprofit organization, who—

(i) Works without financial remuneration in an educational institution to assist students of out-of-school youth; and

(2) Is beyond the age of compulsory school attendance in the State in which the educational institution is located.

AmeriCorps. The term *AmeriCorps* means the combination of all AmeriCorps programs and participants.

AmeriCorps educational award. The term *AmeriCorps educational award* means a national service educational award described in section 147 of the Act.

AmeriCorps participant. The term *AmeriCorps participant* means any individual who is serving in—

(1) An AmeriCorps program;

(2) An approved AmeriCorps position; or

(3) Both.

AmeriCorps program. The term *AmeriCorps program* means—

(1) Any program that receives approved AmeriCorps positions;

(2) Any program that receives Corporation funds under section 121 of the Act; or

(3) Both.

Approved AmeriCorps position. The term *approved AmeriCorps position* means an AmeriCorps position for which the Corporation has approved the provision of an AmeriCorps educational award as one of the benefits to be provided for successful service in the position.

Carry out. The term *carry out,* when used in connection with an AmeriCorps program described in section 122 of the Act, means the planning, establishment, operation, expansion, or replication of the program.

Chief Executive Officer. The term *Chief Executive Officer,* except when used to refer to the chief executive officer of a State, means the Chief Executive Officer of the Corporation appointed under section 193 of the Act.

Community-based agency. The term *community-based agency* means a private nonprofit organization (including a church or other religious entity) that—

(1) Is representative of a community or a significant segment of a community; and

(2) Is engaged in meeting educational, public safety, human, or environmental community needs.

Corporation. The term *Corporation* means the Corporation for National and Community Service established under section 191 of the Act.

Economically disadvantaged. The term *economically disadvantaged,* with respect to an individual, has the same meaning as such term as defined in the Job Training Partnership Act (29 U.S.C. 1503(8)).

Elementary school. The term *elementary school* has the same meaning given the term in section 1471(8) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(8)).

Empowerment zone. The term *empowerment zone* means an area designated as an empowerment zone by the Secretary of the Department of Housing and Urban Development or the Secretary of the Department of Agriculture.

Grantmaking entity. (1) For school-based programs, the term *grantmaking entity* means a public or private nonprofit organization experienced in service-learning that—

(i) Submits an application to make grants for school-based service-learning programs in two or more States; and

(ii) Was in existence at least one year before the date on which the organization submitted the application.

(2) For community-based programs, the term *grantmaking entity* means a qualified organization that—

(i) Submits an application to make grants to qualified organizations to implement, operate, expand, or replicate community-based service programs that provide for educational, public

safety, human, or environmental service by school-age youth in two or more States; and

(ii) Was in existence at least one year before the date on which the organization submitted the application.

Higher Education partnerships. The term *higher education partnership* means one or more public or private nonprofit organizations, or public agencies, including States, and one or more institutions of higher education that have entered into a written agreement specifying the responsibilities of each partner.

Indian. The term *Indian* means a person who is a member of an Indian tribe, or is a ''Native'', as defined in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)).

Indian lands. The term *Indian lands* means any real property owned by an Indian tribe, any real property held in trust by the United States for an Indian or Indian tribe, and any real property held by an Indian or Indian tribe that is subject to restrictions on alienation imposed by the United States.

Indian tribe. The term *Indian tribe* means—

(1) An Indian tribe, band, nation, or other organized group or community that is recognized as eligible for the special programs and services provided by the United States under Federal law to Indians because of their status as Indians, including—

(i) Any Native village, as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)), whether organized traditionally or pursuant to the Act of June 18, 1934 (commonly known as the ''Indian Reorganization Act'', 25 U.S.C. 461 *et seq.*); and

(ii) Any Regional Corporation or Village Corporation, as defined in subsection (g) or (j), respectively, of section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602 (g) or (j)); and

(2) Any tribal organization controlled, sanctioned, or chartered by an entity described in paragraph (1) of this definition.

Individual with a disability. Except as provided in section 175(a) of the Act, the term *individual with a disability* has the meaning given the term in section 7(8)(B) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)(B)), which includes individuals with cognitive and other mental impairments, as well as individuals with physical impairments, who meet the criteria in that definition.

Infrastructure-building activities. The term *infrastructure-building activities* refers to activities that increase the capacity of organizations, programs and individuals to provide high quality service to communities.

Institution of higher education. The term *institution of higher education* has the same meaning given the term in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

Local educational agency (LEA). The term *local educational agency* has the same meaning given the term in section 1471(12) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12)).

Local partnership. The term *local partnership* means a partnership, as defined in §2510.20 of this chapter, that meets the eligibility requirements to apply for subgrants under §2516.110 or §2517.110 of this chapter.

National nonprofit. The term *national nonprofit* means any nonprofit organization whose mission, membership, activities, or constituencies are national in scope.

National service laws. The term *national service laws* means the Act and the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 *et seq.*).

Objective. The term *objective* means a desired accomplishment of a program.

Out-of-school youth. The term *out-of-school youth* means an individual who—

(1) Has not attained the age of 27;

(2) Has not completed college or its equivalent; and

(3) Is not enrolled in an elementary or secondary school or institution of higher education.

Participant. (1) The term *participant* means an individual enrolled in a program that receives assistance under the Act.

(2) A participant may not be considered to be an employee of the program in which the participant is enrolled.

Partnership. The term *partnership* means two or more entities that have

entered into a written agreement specifying the partnership's goals and activities as well as the responsibilities, goals, and activities of each partner.

Partnership program. The term *partnership program* means a program through which an adult volunteer, a public or private nonprofit organization, an institution of higher education, or a business assists a local educational agency.

Program. The term *program,* unless the context otherwise requires, and except when used as part of the term academic program, means a program described in section 111(a) (other than a program referred to in paragraph (3)(B) of that section), 117A(a), 119(b)(1), or 122(a) of the Act, or in paragraph (1) or (2) of section 152(b) of the Act, or an activity that could be funded under sections 198, 198C, or 198D of the Act.

Program sponsor. The term *program sponsor* means an entity responsible for recruiting, selecting, and training participants, providing them benefits and support services, engaging them in regular group activities, and placing them in projects.

Project. The term *project* means an activity, or a set of activities, carried out through a program that receives assistance under the Act, that results in a specific identifiable service or improvement that otherwise would not be done with existing funds, and that does not duplicate the routine services or functions of the employer to whom participants are assigned.

Project sponsor. The term *project sponsor* means an organization, or other entity, that has been selected to provide a placement for a participant.

Qualified individual with a disability. The term *qualified individual with a disability* has the meaning given the term in section 101(8) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111(8)).

Qualified organization. The term *qualified organization* means a public or private nonprofit organization, other than a grantmaking entity, that—

(1) Has experience in working with school-age youth; and

(2) Was in existence at least one year before the date on which the organization submitted an application for a service-learning program.

School-age youth. The term *school-age youth* means—

(1) Individuals between the ages of 5 and 17, inclusive; and

(2) Children with disabilities, as defined in section 602(a)(1) of the Individuals with Disabilities Education Act (20 U.S.C. 1401(a)(1)), who receive services under part B of that Act.

Secondary school. The term *secondary school* has the same meaning given the term in section 1471(21) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(21)).

Service-learning. The term *service-learning* means a method under which students or participants learn and develop through active participation in thoughtfully organized service that—

(1) Is conducted in and meets the needs of a community;

(2) Is coordinated with an elementary school, secondary school, institution of higher education, or community service program, and with the community;

(3) Helps foster civic responsibility;

(4) Is integrated into and enhances the academic curriculum of the students or the educational components of the community service program in which the participants are enrolled; and

(5) Includes structured time for the students and participants to reflect on the service experience.

Service-learning coordinator. The term *service-learning coordinator* means an individual trained in service-learning who identifies community partners for LEAs; assists in designing and implementing local partnerships service-learning programs; provides technical assistance and information to, and facilitates the training of, teachers; and provides other services for an LEA.

State. The term *State* means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. The term also includes Palau, until the Compact of Free Association is ratified.

State Commission. The term *State Commission* means a State Commission on National and Community Service maintained by a State pursuant to section 178 of the Act. Except when used

in section 178, the term includes an alternative administrative entity for a State approved by the Corporation under that section to act in lieu of a State Commission.

State educational agency (SEA). The term *State educational agency* has the same meaning given that term in section 1471(23) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(23)).

Student. The term *student* means an individual who is enrolled in an elementary or secondary school or institution of higher education on a full-time or part-time basis.

Subdivision of a State. The term *subdivision of a State* means an governmental unit within a State other than a unit with Statewide responsibilities.

U.S. Territory. The term *U.S. Territory* means the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Palau, until the Compact of Free Association with Palau is ratified.

[59 FR 13783, Mar. 23, 1994]

PART 2513—STATE PLAN: PURPOSE, APPLICATION REQUIREMENTS AND SELECTION CRITERIA

Sec.

AUTHORITY: 42 U.S.C. 12501 *et seq.*

SOURCE: 59 FR 13785, Mar. 23, 1994, unless otherwise noted.

§ 2513.10 Who must submit a State Plan?

The fifty States, the District of Columbia, and Puerto Rico, through a Corporation-approved State Commission, Alternative Administrative Entity, or Transitional Entity must submit a comprehensive national and community service plan (''State Plan'') in order to apply to the Corporation for support under parts 2515 through 2524 of this chapter.

§ 2513.20 What are the purposes of a State Plan?

The purposes of the State Plan are: (a) To set forth the States plan for promoting national and community service and strengthening its service infrastructure, including how Corporation-funded programs fit into the plan;

(b) To establish specific priorities and goals that advance the State's plan for strengthening its service program infrastructure and to specify strategies for achieving the stated goals;

(c) To inform the Corporation of the relevant historical background of the State's infrastructure for supporting national and community service and other volunteer opportunities, as well as the current status of such infrastructure;

(d) To assist the Corporation in making decisions on applications to receive formula and competitive funding under §2521.30 of this chapter and to assist the Corporation in assessing a State's application for renewal funding for State administrative funds as provided in part 2550 of this chapter; and

(e) To serve as a working document that forms the basis of on-going dialogue between the State and the Corporation and which is subject to modifications as circumstances require.

§ 2513.30 What information must a State Plan contain?

The State Plan must include the following information: (a) An overview of a State's experience in coordinating and supporting the network of service programs within the State that address educational, public safety, human, and environmental needs, including, where appropriate, a description of specific service programs. This overview should encompass programs that have operated independently of and/or without financial support from the State;

(b) A description of the State's priorities and vision for strengthening the service program infrastructure, including how programs proposed for Corporation funding fit into this vision. The plan should also describe how State priorities relate to any national priorities established by the Corporation;

(c) A description of the goals established to advance the State's plan, including the strategies for achieving such goals. With respect to technical assistance activities (if any) and programs proposed to be funded by the Corporation, the plan should describe how such activities and programs will be coordinated with other service programs within the State. The plan should also describe the manner and extent to which the proposed programs will build on existing programs, including Corporation programs such as both the K–12 and Higher Education components of the Learn and Serve America program, and programs funded under the Domestic Volunteer Service Act and other programs;

(d) A description of the extent to which the State entity has coordinated its efforts with the State educational agency (SEA) in the SEA's application for school-based service learning funds;

(e) A description of how the State reached out to a broad cross-section of individuals and organizations to obtain their participation in the development of the State plan, including a discussion of the types of organizations and individuals who were actually involved in the process and the manner and extent of their involvement; and

(f) Such other information as the Corporation may reasonably require.

§ 2513.40 How will the State Plans be evaluated?

State plans will be evaluated on the basis of the following criteria:

(a) The quality of the plan as evidenced by: (1) The development and quality of realistic goals and objectives for moving service ahead in the State;

(2) The extent to which proposed strategies can reasonably be expected to accomplish stated goals;

(3) The extent of input in the development of the State plan from a broad cross-section of individuals and organizations including community-based agencies; organizations with a demonstrated record of providing educational, public safety, human, or environmental services; residents of the State, including youth and other prospective participants, State Education Agencies; traditional service organizations; and labor unions;

(b) The sustainability of the national service efforts outlined in the plan, as evidenced by the extent to which they are supported by: (1) The State, through financial, in-kind, and bi-partisan political support, including the existence of supportive legislation; and

(2) Other support, including the financial, in-kind, and other support of the private sector, foundations, and other entities and individuals; and

(c) Such other criteria as the Corporation deems necessary.

PART 2515—SERVICE-LEARNING PROGRAM PURPOSES

AUTHORITY: 42 U.S.C. 12501 *et seq.*

§ 2515.10 What are the service-learning programs of the Corporation for National and Community Service?

(a) There are three service-learning programs: (1) School-based programs, described in part 2516 of this chapter.

(2) Community-based programs, described in part 2517 of this chapter.

(3) Higher education programs, described in part 2519 of this chapter.

(b) Each program gives participants the opportunity to learn and develop their own capabilities through service-learning, while addressing needs in the community.

[59 FR 13786, Mar. 23, 1994]

PART 2516—SCHOOL-BASED SERVICE-LEARNING PROGRAMS

Subpart A—Eligibility to Apply

Sec.

Subpart B—Use of Grant Funds

Subpart C—Eligibility to Participate

Subpart D—Application Contents

Subpart E—Application Review

Subpart F—Distribution of Funds

Subpart G—Funding Requirements

Subpart H—Evaluation Requirements

AUTHORITY: 42 U.S.C. 12501 *et seq.*

SOURCE: 59 FR 13786, Mar. 23, 1994, unless otherwise noted.

Subpart A—Eligibility to Apply

§ 2516.100 Who may apply for a direct grant from the Corporation?

(a) The following entities may apply for a direct grant from the Corporation:

(1) A State, through a State educational agency (SEA) as defined in § 2510.20 of this chapter. For the purpose of part, ''State'' means one of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and, except for the purpose of § 2516.600 (b), U.S. Territories.

(2) An Indian tribe.

(3) A grantmaking entity as defined in § 2515.20 of this chapter.

(4) For activities in a nonparticipating State, a local educational agency (LEA) as defined in § 2510.20 of this chapter or a local partnership as described in § 2516.110.

(b) The types of grants for which each entity is eligible are described in § 2516.200.

§ 2516.110 Who may apply for a subgrant from a Corporation grantee?

Entities that may apply for a subgrant from a State, Indian tribe, or grantmaking entity are:

(a) An LEA, for a grant from a State for planning school-based service-learning programs.

(b) A local partnership, for a grant from a State or a grantmaking entity to implement, operate, or expand a school-based service learning program.

(1) The local partnership must include an LEA and one or more community partners. The local partnership may include a private for-profit business or private elementary or secondary school.

(2) The community partners must include a public or private nonprofit organization that has demonstrated expertise in the provision of services to meet educational, public safety, human, or environmental needs; was in existence at least one year before the date on which the organization submitted an application under this part; and will make projects available for participants, who must be students.

(c) A local partnership, for a grant from a State or a grantmaking entity

to implement, operate, or expand an adult volunteer program. The local partnership must include an LEA and one or more public or private nonprofit organizations, other educational agencies, or private for-profit businesses that coordinate and operate projects for participants who must be students.

(d) A qualified organization, as defined in §2515.20 of this chapter, for a grant from a State or Indian tribe for planning or building the capacity of the State or Indian tribe.

Subpart B—Use of Grant Funds

§2516.200 How may grant funds be used?

Funds under a school based service learning grant may be used for the purposes described in this section.

(a) *Planning and capacity-building for States and Indian tribes.* (1) A State or Indian tribe may use funds to pay for planning and building its capacity to implement school-based service-learning programs. These entities may use funds either directly or through subgrants or contracts with qualified organizations.

(2) Authorized activities include the following: (i) Providing training for teachers, supervisors, personnel from community-based agencies (particularly with regard to the utilization of participants) and trainers, conducted by qualified individuals or organizations experienced in service-learning.

(ii) Developing service-learning curricula to be integrated into academic programs, including the age-appropriate learning components for students to analyze and apply their service experiences.

(iii) Forming local partnerships described in §2516.110 to develop school-based service-learning programs in accordance with this part.

(iv) Devising appropriate methods for research and evaluation of the educational value of service-learning and the effect of service-learning activities on communities.

(v) Establishing effective outreach and dissemination of information to ensure the broadest possible involvement of community-based agencies with demonstrated effectiveness in working with school-age youth in their communities.

(b) *Implementing, operating, and expanding school-based programs.* (1) A State, Indian Tribe, or grantmaking entity may use funds to make subgrants to local partnerships described in §2516.110 (b) to implement, operate, or expand school-based service-learning programs.

(2) If a State does not submit an application that meets the requirements for an allotment grant under §2516.400, the Corporation may use the allotment to fund applications from those local partnerships for programs in that State.

(3) Authorized activities include paying the costs of the recruitment, training, supervision, placement, salaries and benefits of service learning coordinators.

(4) A grantmaking entity may also use funds to provide technical assistance and training to appropriate persons relating to its subgrants.

(c) *Planning programs.* (1) A State may use funds to make subgrants to LEAs for planning school-based service-learning programs.

(2) If a State does not submit an application that meets the requirements for an allotment grant under §2516.400, the Corporation may use the allotment to fund applications from LEAs for planning programs in that State.

(3) Authorized activities include paying the costs of—

(i) The salaries and benefits of service-learning coordinators as defined in §2510.20 of this chapter; and

(ii) The recruitment, training, supervision, and placement of service-learning coordinators who may be participants in an AmeriCorps program described in parts 2520 through 2524 of this chapter or who receive AmeriCorps educational awards.

(d) *Adult volunteer programs.* (1) A State, Indian tribe, or grantmaking entity may use funds to make subgrants to local partnerships described in §2516.110 (c) to implement, operate, or expand school-based programs involving adult volunteers to utilize service-learning to improve the education of students.

(2) If a State does not submit an application that meets the requirements

for an allotment grant under § 2516.400, the Corporation may use the allotment to fund applications from those local partnerships for adult volunteer programs in that State.

(e) *Planning by Indian tribes and U.S. Territories.* If the Corporation makes a grant to an Indian tribe or a U.S. Territory to plan school-based service-learning programs, the grantee may use the funds for that purpose.

Subpart C—Eligibility to Participate

§ 2516.300 Who may participate in a school-based service-learning program?

Students who are enrolled in elementary or secondary schools on a full-time or part-time basis may participate in school-based programs.

§ 2516.310 May private school students participate?

(a) Yes. To the extent consistent with the number of students in the State or Indian tribe or in the school district of the LEA involved who are enrolled in private nonprofit elementary or secondary schools, the State, Indian tribe, or LEA must (after consultation with appropriate private school representatives) make provision—

(1) For the inclusion of services and arrangements for the benefit of those students so as to allow for the equitable participation of the students in the programs under this part; and

(2) For the training of the teachers of those students so as to allow for the equitable participation of those teachers in the programs under this part.

(b) (1) If a State, Indian tribe, or LEA is prohibited by law from providing for the participation of students or teachers from private nonprofit schools as required by paragraph (a) of this section, or if the Corporation determines that a State, Indian tribe, or LEA substantially fails or is unwilling to provide for their participation on an equitable basis, the Corporation will waive those requirements and arrange for the provision of services to the students and teachers.

(2) Waivers will be subject to the Corporation procedures that are consistent with the consultation, withholding, notice, and judicial review requirements of section 1017(b) (3) and (4) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2727 (b)).

§ 2516.320 Is a participant eligible to receive an AmeriCorps educational award?

No. However, service-learning coordinators who are approved AmeriCorps positions are eligible for AmeriCorps educational awards.

Subpart D—Application Contents

§ 2516.400 What must a State or Indian tribe include in an application for a grant?

In order to apply for a grant from the Corporation under this part, a State (SEA) or Indian tribe must submit the following: (a) A three-year strategic plan for promoting service-learning through programs under this part, or a revision of a previously approved three-year strategic plan. The application of a SEA must include a description of how the SEA will coordinate its service-learning plan with the State Plan under part 2513 of this chapter and with other federally-assisted activities.

(b) A proposal containing the specific program, budget, and other information specified by the Corporation in the grant application package.

(c) Assurances that the applicant will—

(1) Keep such records and provide such information to the Corporation with respect to the programs as may be required for fiscal audits and program evaluation; and

(2) Comply with the nonduplication, nondisplacement, and grievance procedure requirements of part 2540 of this chapter.

§ 2516.410 What must a grantmaking entity, local partnership, or LEA include in an application for a grant?

In order to apply to the Corporation for a grant, a grantmaking entity, local partnership, or LEA must submit the following: (a) A detailed description of the proposed program goals and activities. The application of a grantmaking entity must include—

(1) A description of how the applicant will coordinate its activities with the State Plan under part 2513 of this chapter, including a description of plans to meet and consult with the State Commission, if possible, and to provide a copy of the program application to the State Commission and with other federally-assisted activities; and

(2) A description of how the program will be carried out in more than one State.

(b) The specific program, budget, and other information specified by the Corporation in the grant application package.

(c) Assurances that the applicant will—

(1) Keep such records and provide such information to the Corporation with respect to the program as may be required for fiscal audits and program evaluation;

(2) Prior to the placement of a participant, consult with the appropriate local labor organization, if any, representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by the program, to prevent the displacement and protect the rights of those employees;

(3) Develop an age-appropriate learning component for participants in the program that includes a chance for participants to analyze and apply their service experiences; and

(4) Comply with the nonduplication, nondisplacement, and grievance procedure requirements of part 2540 of this chapter.

(d) For a local partnership, an assurance that the LEA will serve as the fiscal agent.

§2516.420 What must an LEA, local partnership, or qualified organization include in an application for a subgrant?

In order to apply for a subgrant from an SEA, Indian tribe, or grantmaking entity under this part, an applicant must include the information required by the Corporation grantee.

Subpart E—Application Review

§2516.500 How does the Corporation review the merits of an application?

(a) In reviewing the merits of an application submitted to the Corporation under this part, the Corporation evaluates the quality, innovation, replicability, and sustainability of the proposal on the basis of the following criteria: (1) Quality, as indicated by the extent to which—

(i) The program will provide productive meaningful, educational experiences that incorporate service-learning methods;

(ii) The program will meet community needs and involve individuals from diverse backgrounds (including economically disadvantaged youth) who will serve together to explore the root causes of community problems;

(iii) The principal leaders of the program will be well qualified for their responsibilities;

(iv) The program has sound plans and processes for training, technical assistance, supervision, quality control, evaluation, administration, and other key activities; and

(v) The program will advance knowledge about how to do effective and innovative community service and service-learning and enhance the broader elementary and secondary education field.

(2) Replicability, as indicated by the extent to which the program will assist others in learning from experience and replicating the approach of the program.

(3) Sustainability, as indicated by the extent to which—

(i) An SEA, Indian tribe or grantmaking entity applicant demonstrates the ability and willingness to coordinate its activities with the State Plan under part 2513 of this chapter and with other federally assisted activities;

(ii) The program will foster collaborative efforts among local educational agencies, local government agencies, community based agencies, businesses, and State agencies;

(iii) The program will enjoy strong, broad-based community support; and

(iv) There is evidence that financial resources will be available to continue the program after the expiration of the grant.

(b) The Corporation also gives priority to proposals that—

(1) Involve participants in the design and operation of the program;

(2) Reflect the greatest need for assistance, such as programs targeting low-income areas;

(3) Involve students from public and private schools serving together;

(4) Involve students of different ages, races, genders, ethnicities, abilities and disabilities, or economic backgrounds, serving together;

(5) Are integrated into the academic program of the participants;

(6) Best represent the potential of service-learning as a vehicle for education reform and school-to-work transition;

(7) Develop civic responsibility and leadership skills and qualities in participants;

(8) Demonstrate the ability to achieve the goals of this part on the basis of the proposal's quality, innovation, replicability, and sustainability; or

(9) Address any other priority established by the Corporation for a particular period.

(c) In reviewing applications submitted by Indian tribes and U.S. Territories, the Corporation—

(1) May decide to approve only planning of school-based service-learning programs; and

(2) Will set the amounts of grants in accordance with the respective needs of applicants.

§ 2516.510 What happens if the Corporation rejects a State's application for an allotment grant?

If the Corporation rejects a State's application for an allotment grant under § 2516.600(b)(2), the Corporation will—

(a) Promptly notify the State of the reasons for the rejection;

(b) Provide the State with a reasonable opportunity to revise and resubmit the application;

(c) Provide technical assistance, if necessary; and

(d) Promptly reconsider the resubmitted application and make a decision.

§ 2516.520 How does a State, Indian tribe, or grantmaking entity review the merits of an application?

In reviewing the merits of an application for a subgrant under this part, a Corporation grantee must use the criteria and priorities in § 2516.500.

Subpart F—Distribution of Funds

§ 2516.600 How are funds for school-based service-learning programs distributed?

(a) Of the amounts appropriated to carry out this part for any fiscal year, the Corporation will reserve not more than three percent for grants to Indian tribes and U.S. Territories to be allotted in accordance with their respective needs.

(b) The Corporation will use the remainder of the funds appropriated as follows: (1) Competitive Grants. From 25 percent of the remainder, the Corporation may make grants on a competitive basis to States, Indian tribes, or grantmaking entities.

(2) Allotments to States.

(i) From 37.5 percent of the remainder, the Corporation will allot to each State an amount that bears the same ratio to 37.5 percent of the remainder as the number of school-age youth in the State bears to the total number of school-age youth of all States.

(ii) From 37.5 percent of the remainder, the Corporation will allot to each State an amount that bears the same ratio to 37.5 percent of the remainder as the allocation to the State for the previous fiscal year under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2711 *et seq.*) bears to the allocations to all States.

(iii) Notwithstanding other provisions of paragraph (b)(2) of this section, no State will receive an allotment that is less than the allotment the State received for fiscal year 1993 from the Commission on National and Community Service. If the amount of funds made available in a fiscal year is insufficient to make those allotments, the Corporation will make additional funds

available from the 25 percent described in paragraph (b)(1) of this section for that fiscal year to make those allotments.

(3) For the purpose of paragraph (b) of this section, ''State'' means one of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(c) If a State or Indian tribe does not submit an application that meets the requirements for approval under this part, the Corporation (after making any grants to local partnerships or LEAs for activities in nonparticipating States) may use its allotment for States and Indian tribes with approved applications, as the Corporation determines appropriate.

(d) Notwithstanding other provisions of this section, if less than $20,000,000 is made available in any fiscal year to carry out this part, the Corporation will make all grants to States and Indian tribes on a competitive basis.

Subpart G—Funding Requirements

§2516.700 Are matching funds required?

(a) Yes. The Corporation share of the cost of carrying out a program funded under this part may not exceed—

(1) Ninety percent of the total cost for the first year for which the program receives assistance;

(2) Eighty percent of the total cost for the second year;

(3) Seventy percent of the total cost for the third year; and

(4) Fifty percent of the total cost for the fourth year and any subsequent year.

(b) In providing for the remaining share of the cost of carrying out a program, each recipient of assistance must provide for that share through a payment in cash or in kind, fairly evaluated, including facilities, equipment, or services, and may provide for that share through State sources, local sources, or Federal sources (other than funds made available under the national service laws).

(c) However, the Corporation may waive the requirements of paragraph (b) of this section in whole or in part with respect to any program in any fiscal year if the Corporation determines that the waiver would be equitable due to a lack of available financial resources at the local level.

§2516.710 Are there limits on the use of funds?

Yes. The following limits apply to funds made available under this part: (a)(1) The recipient of a direct grant from the Corporation may spend no more than five percent of the grant funds on administrative costs for any fiscal year.

(2) If a Corporation grantee makes a subgrant to an entity to carry out a service-learning program, the Corporation grantee may determine how the allowable administrative costs will be distributed between itself and the subgrantee.

(b) (1) An SEA or Indian tribe must spend between ten and 15 percent of the grant to build capacity through training, technical assistance, curriculum development, and coordination activities.

(2) However, the Corporation may waive this requirement in order to permit an SEA or a tribe to use between ten percent and 20 percent of the grant funds to build capacity. To be eligible to receive the waiver, the SEA or tribe must submit an application to the Corporation.

(c) Funds made available under this part may not be used to pay any stipend, allowance, or other financial support to any participant in a service-learning program under this part except reimbursement for transportation, meals, and other reasonable out-of-pocket expenses directly related to participation in a program assisted under this part.

§2516.720 What is the length of each type of grant?

(a) One year is the maximum length of—

(1) A planning grant under §2516.200 (a), (c) or (e); and

(2) A grant to a local partnership for activities in a nonparticipating State under §2516.200 (b)(2) and (d)(2).

(b) All other grants are for a period of up to three years, subject to satisfactory performance and annual appropriations.

§ 2516.730 May an applicant submit more than one application to the Corporation for the same project at the same time?

No. The Corporation will reject an application for a project if an application for funding or educational awards for the same project is already pending before the Corporation.

Subpart H—Evaluation Requirements

§ 2516.800 What are the purposes of an evaluation?

Every evaluation effort should serve to improve program quality, examine benefits of service, or fulfill legislative requirements.

§ 2516.810 What types of evaluations are grantees and subgrantees required to perform?

All grantees and subgrantees are required to perform internal evaluations which are ongoing efforts to assess performance and improve quality. Grantees and subgrantees may, but are not required to, arrange for independent evaluations which are assessments of program effectiveness by individuals who are not directly involved in the administration of the program. The cost of independent evaluations is allowable.

§ 2516.820 What types of internal evaluation activities are required of programs?

Programs are required to: (a) Continuously assess management effectiveness, the quality of services provided, and the satisfaction of both participants and service recipients. Internal evaluations should seek frequent feedback and provide for quick correction of weakness. The Corporation encourages programs to use internal evaluation methods, such as community advisory councils, participant advisory councils, peer reviews, quality control inspections, and service recipient and participant surveys.

(b) Track progress toward pre-established objectives. Objectives must be established by programs and approved by the Corporation. Programs must submit to the Corporation (or the Corporation grantee as applicable) periodic performance reports.

(c) Collect and submit to the Corporation (through the Corporation grantee as applicable) the following data: (1) The total number of participants in each program and basic demographic characteristics of the participants including sex, age, economic background, education level, ethnic group, disability classification, and geographic region.

(2) Other information as required by the Corporation.

(d) Cooperate fully with all Corporation evaluation activities.

§ 2516.830 What types of activities are required of Corporation grantees to evaluate the effectiveness of their subgrantees?

A Corporation grantee that makes subgrants must do the following: (a) Ensure that subgrantees comply with the requirements of § 2516.840.

(b) Track program performance in terms of progress toward pre-established objectives; ensure that corrective action is taken when necessary; and submit to the Corporation periodic performance reports.

(c) Collect from programs and submit to the Corporation the descriptive information required in § 2516.820(c)(1).

(d) Cooperate fully with all Corporation evaluation activities.

§ 2516.840 By what standards will the Corporation evaluate individual Learn and Serve America programs?

The Corporation will evaluate programs based on the following: (a) The extent to which the program meets the objectives established and agreed to by the grantee and the Corporation before the grant award.

(b) The extent to which the program is cost-effective.

(c) Other criteria as determined and published by the Corporation.

§ 2516.850 What will the Corporation do to evaluate the overall success of the service-learning program?

(a) The Corporation will conduct independent evaluations. These evaluations will consider the opinions of participants and members of the communities where services are delivered. If

appropriate, these evaluations will compare participants with individuals who have not participated in service-learning programs. These evaluations will—

(1) Study the extent to which service-learning programs as a whole affect the involved communities;

(2) Determine the extent to which service-learning programs as a whole increase academic learning of participants, enhance civic education, and foster continued community involvement; and

(3) Determine the effectiveness of different program models.

(b) The Corporation will also determine by June 30, 1995, whether outcomes of service-learning programs are defined and measured appropriately, and the implications of the results from such a study for authorized funding levels.

§2516.860 Will information on individual participants be kept confidential?

(a) Yes. The Corporation will maintain the confidentiality of information regarding individual participants that is acquired for the purpose of the evaluations described in §2516.840. The Corporation will disclose individual participant information only with the prior written consent of the participant. However, the Corporation may disclose aggregate participant information.

(b) Grantees and subgrantees under this part must comply with the provisions of paragraph (a) of this section.

PART 2517—COMMUNITY-BASED SERVICE-LEARNING PROGRAMS

Subpart A—Eligibility to Apply

Sec.

Subpart B—Use of Grant Funds

Subpart C—Eligibility to Participate

Subpart D—Application Contents

Subpart E—Application Review

Subpart F—Distribution of Funds

Subpart G—Funding Requirements

Subpart H—Evaluation Requirements

AUTHORITY: 42 U.S.C. 12501 *et seq.*

SOURCE: 59 FR 13790, Mar. 23, 1994, unless otherwise noted.

Subpart A—Eligibility to Apply

§2517.100 Who may apply for a direct grant from the Corporation?

(a) The following entities may apply for a direct grant from the Corporation: (1) A State Commission established under part 2550 of this chapter.

(2) A grantmaking entity as defined in §2510.20 of this chapter.

(3) A qualified organization as defined in §2515.20 of this chapter.

(b) The types of grants for which each entity is eligible are described in §2517.200.

§2517.110 Who may apply for a subgrant from a Corporation grantee?

Entities that may apply for a subgrant from a State Commission or grantmaking entity are qualified organizations that have entered into a local partnership with one or more—

(a) Local educational agencies (LEAs);

(b) Other qualified organizations; or

(c) Both.

Subpart B—Use of Grant Funds

§ 2517.200 How may grant funds be used?

Funds under a community-based Learn and Serve grant may be used for the purposes described in this section.

(a) A State Commission or grantmaking entity may use funds—

(1) To make subgrants to qualified organizations described in § 2517.110 to implement, operate, expand, or replicate a community-based service program that provides direct and demonstrable educational, public safety, human, or environmental service by participants, who must be school-age youth; and

(2) To provide training and technical assistance to qualified organizations.

(b) (1) A qualified organization may use funds under a direct grant or a subgrant to implement, operate, expand, or replicate a community-based service program.

(2) If a qualified organization receives a direct grant, its program must be carried out at multiple sites or be particularly innovative.

Subpart C—Eligibility to Participate

§ 2517.300 Who may participate in a community-based service-learning program?

School-age youth as defined in § 2510.20 of this chapter may participate in a community-based program.

Subpart D—Application Contents

§ 2517.400 What must a State Commission or grantmaking entity include in an application for a grant?

(a) In order to apply for a grant from the Corporation under this part, a State Commission or a grantmaking entity must submit the following: (1) A three-year plan for promoting service-learning through programs under this part. The plan must describe the types of community-based program models proposed to be carried out during the first year.

(2) A proposal containing the specific program, budget, and other information specified by the Corporation in the grant application package.

(3) A description of how the applicant will coordinate its activities with the State Plan under part 2513 of this chapter and with other federally-assisted activities, including a description of plans to meet and consult with the State Commission, if possible, and to provide a copy of the program application to the State Commission.

(4) Assurances that the applicant will—

(i) Keep such records and provide such information to the Corporation with respect to the programs as may be required for fiscal audits and program evaluation;

(ii) Comply with the nonduplication, nondisplacement, and grievance procedure requirements of part 2540 of this chapter; and

(iii) Ensure that, prior to placing a participant in a program, the entity carrying out the program will consult with the appropriate local labor organization, if any, representing employees in the area in which the program will be carried out that are engaged in the same or similar work as the work proposed to be carried out by the program, to prevent the displacement of those employees.

(b) In addition, a grantmaking entity must submit information demonstrating that the entity will make grants for a program—

(1) To carry out activities in two or more States, under circumstances in which those activities can be carried out more efficiently through one program than through two or more programs; and

(2) To carry out the same activities, such as training activities or activities related to exchanging information on service experiences, through each of the projects assisted through the program.

§ 2517.410 What must a qualified organization include in an application for a grant or a subgrant?

(a) In order to apply to the Corporation for a direct grant, a qualified organization must submit the following: (1) A plan describing the goals and activities of the proposed program;

(2) A proposal containing the specific program, budget, and other information specified by the Corporation in the grant application package; and

(3) Assurances that the applicant will—

(i) Keep such records and provide such information to the Corporation with respect to the program as may be required for fiscal audits and program evaluation;

(ii) Comply with the nonduplication, nondisplacement, and grievance procedure requirements of part 2540 of this chapter; and

(iii) Prior to placing a participant in the program, consult with the appropriate local labor organization, if any, representing employees in the area in which the program will be carried out who are engaged in the same or similar work as the work proposed to be carried out by the program, to prevent the displacement of those employees.

(b) In order to apply to a State Commission or a grantmaking entity for a subgrant, a qualified organization must submit the following: (1) A plan describing the goals and activities of the proposed program; and

(2) Such specific program, budget, and other information as the Commission or entity reasonably requires.

Subpart E—Application Review

§2517.500 How is an application reviewed?

In reviewing an application for a grant or a subgrant, the Corporation, a State Commission, or a grantmaking entity will apply the following criteria:

(a) The quality of the program proposed.

(b) The innovation of, and feasibility of replicating, the program.

(c) The sustainability of the program, based on—

(1) Strong and broad-based community support;

(2) Multiple funding sources or private funding; and

(3) Coordination with the State Plan under part 2513 of this chapter and other federally-assisted activities.

(d) The quality of the leadership of the program, past performance of the program, and the extent to which the program builds on existing programs.

(e) The applicant's efforts—

(1) To recruit participants from among residents of the communities in which projects would be conducted;

(2) To ensure that the projects are open to participants of different ages, races, genders, ethnicities, abilities and disabilities, and economic backgrounds; and

(3) To involve participants and community residents in the design, leadership, and operation of the program.

(f) The extent to which projects would be located in areas that are—

(1) Empowerment zones, redevelopment areas, or other areas with high concentrations of low-income people; or

(2) Environmentally distressed.

Subpart F—Distribution of Funds

§2517.600 How are funds for community-based service-learning programs distributed?

All funds are distributed by the Corporation through competitive grants.

Subpart G—Funding Requirements

§2517.700 Are matching funds required?

(a) Yes. The Corporation share of the cost of carrying out a program funded under this part may not exceed—

(1) Ninety percent of the total cost for the first year for which the program receives assistance;

(2) Eighty percent of the total cost for the second year;

(3) Seventy percent of the total cost for the third year; and

(4) Fifty percent of the total cost for the fourth year and any subsequent year.

(b) In providing for the remaining share of the cost of carrying out a program, each recipient of assistance must provide for that share through a payment in cash or in kind, fairly evaluated, including facilities, equipment, or services, and may provide for that share through State sources, local sources, or Federal sources (other than funds made available under the national service laws).

(c) However, the Corporation may waive the requirements of paragraph (b) of this section in whole or in part

with respect to any program in any fiscal year if the Corporation determines that the waiver would be equitable due to lack of available financial resources at the local level.

§ 2517.710 Are there limits on the use of funds?

Yes. The following limits apply to funds made available under this part: (a)(1) The recipient of a direct grant from the Corporation may spend no more than five percent of the grant funds on administrative costs for any fiscal year.

(2) If a Corporation grantee makes a subgrant to an entity to carry out a service-learning program, the Corporation grantee may determine how the allowable administrative costs will be distributed between itself and the subgrantee.

(b) Funds made available under this part may not be used to pay any stipend, allowance, or other financial support to any participant in a service-learning program under this part except reimbursement for transportation, meals, and other reasonable out-of-pocket expenses directly related to participation in a program assisted under this part.

§ 2517.720 What is the length of a grant?

A grant under this part is for a period of up to three years, subject to satisfactory performance and annual appropriations.

§ 2517.730 May an applicant submit more than one application to the Corporation for the same project at the same time?

No. The Corporation will reject an application for a project if an application for funding or educational awards for the same project is already pending before the Corporation.

Subpart H—Evaluation Requirements

§ 2517.800 What are the evaluation requirements for community-based programs?

The evaluation requirements for recipients of grants and subgrants under part 2516 of this chapter, relating to school-based service-learning programs, apply to recipients under this part.

PART 2518—SERVICE-LEARNING CLEARINGHOUSE

Sec.

AUTHORITY: 42 U.S.C. 12501 *et seq.*

§ 2518.100 What is the purpose of a Service-Learning Clearinghouse?

The Corporation will provide financial assistance, from funds appropriated to carry out the activities listed under parts 2530 through 2533 of this chapter, to public or private nonprofit organizations that have extensive experience with service-learning, including use of adult volunteers to foster service-learning, to establish a clearinghouse, which will carry out activities, either directly or by arrangement with another such organization, with respect to information about service-learning.

[59 FR 13792, Mar. 23, 1994]

§ 2518.110 What are the functions of a Service-Learning Clearinghouse?

An organization that receives assistance from funds appropriated to carry out the activities listed under parts 2530 through 2533 of this chapter may—

(a) Assist entities carrying out State or local service-learning programs with needs assessments and planning;

(b) Conduct research and evaluations concerning service-learning;

(c)(1) Provide leadership development and training to State and local service-learning program administrators, supervisors, project sponsors, and participants; and

(2) Provide training to persons who can provide the leadership development and training described in paragraph (c)(1) of this section;

(d) Facilitate communication among entities carrying out service-learning programs and participants in such programs;

(e) Provide information, curriculum materials, and technical assistance relating to planning and operation of

service-learning programs, to States and local entities eligible to receive financial assistance under this title;

(f) Provide information regarding methods to make service-learning programs accessible to individuals with disabilities;

(g)(1) Gather and disseminate information on successful service-learning programs, components of such successful programs, innovative youth skills curricula related to service-learning, and service-learning projects; and

(2) Coordinate the activities of the Clearinghouse with appropriate entities to avoid duplication of effort;

(h) Make recommendations to State and local entities on quality controls to improve the quality of service-learning programs;

(i) Assist organizations in recruiting, screening, and placing service-learning coordinators; and

(j) Carry out such other activities as the Chief Executive Officer determines to be appropriate.

[59 FR 13792, Mar. 23, 1994]

PART 2519—HIGHER EDUCATION INNOVATIVE PROGRAMS FOR COMMUNITY SERVICE

Subpart A—Purpose and Eligibility to Apply

Sec.

Subpart B—Use of Grant Funds

Subpart C—Participant Eligibility and Benefits

Subpart D—Application Contents

Subpart E—Application Review

Subpart F—Distribution of Funds

Subpart G—Funding Requirements

Subpart H—Evaluation Requirements

AUTHORITY: 42 U.S.C. 12501 *et seq.*

SOURCE: 59 FR 13792, Mar. 23, 1994, unless otherwise noted.

Subpart A—Purpose and Eligibility to Apply

§2519.100 What is the purpose of the Higher Education programs?

The purpose of the higher education innovative programs for community service is to expand participation in community service by supporting high-quality, sustainable community service programs carried out through institutions of higher education, acting as civic institutions helping to meet the educational, public safety, human, and environmental needs of the communities in which the programs operate.

§2519.110 Who may apply for a grant?

The following entities may apply for a grant from the Corporation: (a) An institution of higher education.

(b) A consortium of institutions of higher education.

(c) A higher education partnership, as defined in §2510.20 of this chapter.

Subpart B—Use of Grant Funds

§2519.200 How may grant funds be used?

Funds under a higher education program grant may be used for the following activities: (a) Enabling an institution of higher education, a higher education partnership or a consortium to create or expand an organized community service program that—

(1) Engenders a sense of social responsibility and commitment to the

community in which the institution is located; and

(2) Provides projects for the participants described in § 2519.300.

(b) Supporting student-initiated and student-designed community service projects.

(c) Strengthening the leadership and instructional capacity of teachers at the elementary, secondary, and post-secondary levels with respect to service-learning by—

(1) Including service-learning as a key component of the preservice teacher education of the institution; and

(2) Encouraging the faculty of the institution to use service-learning methods throughout the curriculum.

(d) Facilitating the integration of community service carried out under the grant into academic curricula, including integration of clinical programs into the curriculum for students in professional schools, so that students may obtain credit for their community service projects.

(e) Supplementing the funds available to carry out work-study programs under part C of title IV of the Higher Education Act of 1965 (42 U.S.C. 2751 *et seq.*) to support service-learning and community service.

(f) Strengthening the service infrastructure within institutions of higher education in the United States that supports service-learning and community service.

(g) Providing for the training of teachers, prospective teachers, related education personnel, and community leaders in the skills necessary to develop, supervise, and organize service-learning.

Subpart C—Participant Eligibility and Benefits

§ 2519.300 Who may participate in a Higher Education program?

Students, faculty, administration and staff of an institution, as well as residents of the community may participate. For the purpose of this part, the term ''student'' means an individual who is enrolled in an institution of higher education on a full-time or part-time basis.

§ 2519.310 Is a participant eligible to receive an AmeriCorps educational award?

In general, no. However, certain positions in programs funded under this part may qualify as approved AmeriCorps positions. The Corporation will establish eligibility requirements for these positions as a part of the application package.

§ 2519.320 May a program provide a stipend to a participant?

(a) A program may provide a stipend for service activities for a participant who is a student if the provision of stipends in reasonable in the context of a program's design and objectives.

(1) A program may not provide a stipend to a student who is receiving academic credit for service activities unless the service activities require a substantial time commitment beyond that expected for the credit earned.

(2) A participant who is earning money for service activities under the work-study program described in § 2519.200(e) may not receive an additional stipend from funds under this part.

(b) Consistent with the AmeriCorps program requirements in § 2522.100 of this chapter, a program with participants serving in approved full-time AmeriCorps positions must ensure the provision of a living allowance and, if necessary, health care and child care to those participants. A program may, but is not required to, provide a prorated living allowance to individuals participating in approved AmeriCorps positions on a part-time basis, consistent with the AmeriCorps program requirements in § 2522.240 of this chapter.

Subpart D—Application Contents

§ 2519.400 What must an applicant include in an application for a grant?

In order to apply to the Corporation for a grant, an applicant must submit the following: (a) A plan describing the goals and activities of the proposed program.

(b) The specific program, budget, and other information and assurances specified by the Corporation in the grant application package.

(c) Assurances that the applicant will—

(1) Keep such records and provide such information to the Corporation with respect to the program as may be required for fiscal audits and program evaluation;

(2) Comply with the nonduplication, nondisplacement, and grievance procedure requirements of part 2540 of this chapter;

(3) Prior to the placement of a participant in the program, consult with the appropriate local labor organization, if any, representing employees in the area who are engaged in the same or similar work as the work proposed to be carried out by the program, to prevent the displacement and protect the rights of those employees; and

(4) Comply with any other assurances that the Corporation deems necessary.

Subpart E—Application Review

§ 2519.500 How does the Corporation review an application?

(a) The Corporation will review an application submitted under this part on the basis of the quality, innovation, replicability, and sustainability of the proposed program and such other criteria as the Corporation establishes in an application package.

(b) In addition, in reviewing an application submitted under this part, the Corporation will give a proposed program increased priority for each characteristic described in paragraphs (b)(1) through (7) of this section. Priority programs—

(1) Demonstrate the commitment of the institution of higher education, other than by demonstrating the commitment of its students, to supporting the community service projects carried out under the program;

(2) Specify how the institution will promote faculty, administration, and staff participation in the community service projects;

(3) Specify the manner in which the institution will provide service to the community through organized programs, including, where appropriate, clinical programs for students in professional schools;

(4) Describe any higher education partnership that will participate in the community service projects, such as a higher education partnership comprised of the institution, a student organization, a community-based agency, a local government agency, or a nonprofit entity that serves or involves school-age youth or older adults;

(5) Demonstrate community involvement in the development of the proposal;

(6) Specify that the institution will use funds under this part to strengthen the infrastructure in institutions of higher education; or

(7) With respect to projects involving delivery of service, specify projects that involve leadership development of school-age youth.

(c) In addition, the Corporation may designate additional priorities in an application package that will be used in selecting programs.

Subpart F—Distribution of Funds

§ 2519.600 How are funds for Higher Education programs distributed?

All funds under this part are distributed by the Corporation through grants or by contract.

Subpart G—Funding Requirements

§ 2519.700 Are matching funds required?

(a) Yes. The Corporation share of the cost of carrying out a program funded under this part may not exceed 50 percent.

(b) In providing for the remaining share of the cost of carrying out a program, each recipient of assistance must provide for that share through a payment in cash or in kind, fairly evaluated, including facilities, equipment, or services, and may provide for that share through State sources, local sources, of Federal sources (other than funds made available under the national service laws).

(c) However, the Corporation may waive the requirements of paragraph (b) of this section in whole or in part with respect to any program in any fiscal year if the Corporation determines that the waiver would be equitable due to lack of available financial resources at the local level.

§ 2519.710 Are there limits on the use of funds?

Yes. The recipient of a grant under this part may spend no more than five percent of the grant funds on administrative costs.

§ 2519.720 What is the length of a grant?

A grant under this part is for a period of up to three years, subject to satisfactory performance and annual appropriations.

§ 2519.730 May an applicant submit more than one application to the Corporation for the same project at the same time?

No. The Corporation will reject an application for a project if an application for funding or educational awards for the same project is already pending before the Corporation.

Subpart H—Evaluation Requirements

§ 2519.800 What are the evaluation requirements for Higher Education programs?

The monitoring and evaluation requirements for recipients of grants and subgrants under part 2516 of this chapter, relating to school-based service-learning programs, apply to recipients under this part.

PART 2520—GENERAL PROVISIONS: AMERICORPS PROGRAMS

Sec.

AUTHORITY: 42 U.S.C. 12501 *et seq.*

SOURCE: 59 FR 13794, Mar. 23, 1994, unless otherwise noted.

§ 2520.10 What is the purpose of the AmeriCorps program described in parts 2520 through 2524 of this chapter?

The purpose of the AmeriCorps grant program is to provide financial assistance to support AmeriCorps programs that address educational, public safety, human, or environmental needs through national and community service to provide AmeriCorps education awards to participants in such progams.

§ 2520.20 What types of service activities are allowable for programs supported under parts 2520 through 2524 of this chapter?

(a) The service must either provide a direct benefit to the community where it is performed, or involve the supervision of participants or volunteers whose service provides a direct benefit to the community where it is performed. Moreover, the approved AmeriCorps activities must result in a specific identifiable service or improvement that otherwise would not be provided with existing funds or volunteers and that does not duplicate the routine functions of workers or displace paid employees. Programs must develop service opportuntities that are appropriate to the skill levels of participants and that provide a demonstrable, identifiable benefit that is valued by the community.

(b) In certain circumstances, some activities may not provide a direct benefit to the communities in which service is performed. Such activities may include, but are not limited to, clerical work and research. However, a participant may engage in such activities if the performance of the activity is incidental to the participant's provision of service that does provide a direct benefit to the community in which the service is performed.

§ 2520.30 Are there any activities that are prohibited?

Yes. Some activities are prohibited altogether. Although all prohibited activities may be performed voluntarily by participants on their own time, they may not be performed by participants in the course of their duties, at the request of program staff, or in a manner that would associate the activities with the AmeriCorps program or the Corporation. These activities include:

(a) Any effort to influence legislation, as prohibited under section 501(c)

of the Internal Revenue Code of 1986 (26 U.S.C. 501(c));

(b) Organizing protests, petitions, boycotts, or strikes;

(c) Assisting, promoting or deterring union organizing;

(d) Impairing existing contracts for services or collective bargaining agreements;

(e) Engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;

(f) Engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization;

(g) Providing a direct benefit to—

(1) A business organized for profit;

(2) A labor union;

(3) A partisan political organization;

(4) A nonprofit organization that fails to comply with the restrictions contained in section 501(c) of the Internal Revenue Code of 1986 except that nothing in this section shall be construed to prevent participants from engaging in advocacy activities undertaken at their own initiative; and

(5) An organization engaged in the religious activities described in paragraph (e) of this section, unless Corporation assistance is not used to support those religious activities; and

(h) Such other activities as the Corporation may prohibit.

PART 2521—ELIGIBLE AMERICORPS PROGRAM APPLICANTS AND TYPES OF GRANTS AVAILABLE FOR AWARD

Sec.

AUTHORITY: 42 U.S.C. 12501 *et seq.*

SOURCE: 59 FR 13794, Mar. 23, 1994, unless otherwise noted.

§ 2521.10 Who may apply to receive an AmeriCorps grant?

(a) States (including Territories), subdivisions of States, Indian tribes, public or private nonprofit organizations (including labor organizations), and institutions of higher education are eligible to apply for AmeriCorps grants. However, the fifty States, the District of Columbia and Puerto Rico must first receive Corporation authorization for the use of a State Commission or alternative administrative or transitional entity pursuant to part 2550 of this chapter in order to be eligible for an AmeriCorps grant.

(b) The Corporation may also enter into contracts or cooperative agreements for AmeriCorps assistance with Federal agencies that are Executive Branch agencies or departments. Bureaus, divisions, and local and regional offices of such departments and agencies may only receive assistance pursuant to a contract or agreement with the central department or agency. The requirements relating to Federal agencies are described in part 2523 of this chapter.

§ 2521.20 What types of AmeriCorps program grants are available for award?

The Corporation may make the following types of grants to eligible applicants. The requirements of this section will also apply to any State or other applicant receiving assistance under this part that proposes to conduct a grant program using the assistance to support other national or community service programs.

(a) *Planning grants.*—(1) *Purpose.* The purpose of a planning grant is to assist an applicant in completing the planning necessary to implement a sound concept that has already been developed.

(2) *Eligibility.* (i) States may apply directly to the Corporation for planning grants.

(ii) Subdivisions of States, Indian Tribes, public or private nonprofit organizations (including labor organizations), and institutions of higher education may apply either to a State or directly to the Corporation for planning grants.

(3) *Duration.* A planning grant will be negotiated for a term not to exceed one year.

(b) *Operational grants.*—(1) *Purpose.* The purpose of an operational grant is to fund an organization that is ready to establish, operate, or expand an AmeriCorps program. An operational grant may include AmeriCorps educational awards. An operational grant may also include a short planning period of up to six months, if necessary, to implement a program.

(2) *Eligibility.* (i) States may apply directly to the Corporation for operational grants.

(ii) Subdivisions of States, Indian Tribes, public or private nonprofit organizations (including labor organizations), and institutions of higher education may apply either to a State or directly to the Corporation for operational grants. The Corporation may limit the categories of applicants eligible to apply directly to the Corporation for assistance under this section consistent with its National priorities.

(3) *Duration.* An operational grant will be negotiated for a term not to exceed three years. Within a three-year term, renewal funding will be contingent upon periodic assessment of program quality, progress to date, and availability of Congressional appropriations.

(c) *AmeriCorps Educational Awards Only.*—(1) *Purpose.* The purpose of these awards is to provide AmeriCorps educational awards to programs that are not receiving or applying to the Corporation for program assistance but that meet the criteria for approved AmeriCorps positions, and desire to provide an AmeriCorps educational award to participants serving in approved positions.

(2) *Eligibility.* States, subdivisions of States, Indian Tribes, Federal agencies, public or private nonprofit organizations (including labor organizations), and institutions of higher education may apply directly to the Corporation for AmeriCorps educational awards only.

(d) *Replication Grants.* The Corporation may provide assistance for the replication of an existing national service program to another geographical location.

(e) *Training, technical assistance and other special grants.*—(1) *Purpose.* The purpose of these grants is to ensure broad access to AmeriCorps programs for all Americans, including those with disabilities; support disaster relief efforts; assist efforts to secure private support for programs through challenge grants; and ensure program quality by supporting technical assistance and training programs.

(2) *Eligibility.* Eligibility varies and is detailed under 45 CFR part 2524, ''Technical Assistance and Other Special Grants.''

(3) *Duration.* Grants will be negotiated for a renewable term of up to three years.

§ 2521.30 How will AmeriCorps program grants be awarded?

In any fiscal year, the Corporation will award AmeriCorps program grants as follows:

(a) *Grants to State Applicants.* (1) For the purposes of this section, the term ''State'' means the fifty States, Puerto Rico, and the District of Columbia.

(2) One-third of the funds available under this part and a corresponding allotment of AmeriCorps educational awards, as specified by the Corporation, will be distributed according to a population-based formula to the 50 States, Puerto Rico and the District of Columbia if they have applications approved by the Corporation.

(3) At least one-third of funds available under this part and an appropriate number of AmeriCorps awards, as determined by the Corporation, will be awarded to States on a competitive basis. In order to receive these funds, a State must receive funds under paragraphs (a)(2) or (b)(1) of this section in the same fiscal year.

(4) In making subgrants with funds awarded by formula or competition under paragraphs (a) (2) or (3) of this section, a State must: (i) Provide a description of the process used to select programs for funding including a certification that the State or other entity used a competitive process and criteria that were consistent with the selection criteria in §2522.410 of this chapter. In making such competitive selections, the State must ensure the equitable allocation within the State

of assistance and approved AmeriCorps positions provided under this subtitle to the State taking into consideration such factors as the location of the programs applying to the State, population density, and economic distress;

(ii) Provide a written assurance that not less than 60 percent of the assistance provided to the State will be used to make grants in support of AmeriCorps programs other than AmeriCorps programs carried out by the State or a State agency. The Corporation may permit a State to deviate from this percentage if the State demonstrates that it did not receive a sufficient number of acceptable applications; and

(iii) Ensure that a minimum of 50 percent of funds going to States will be used for programs that operate in the areas of need or on Federal or other public lands, and that place a priority on recruiting participants who are residents in high need areas, or on Federal or other public lands. The Corporation may waive this requirement for an individual State if at least 50 percent of the total amount of assistance to all States will be used for such programs.

(b) *Grants to Applicants other than States.* (1) One percent of available funds will be distributed to the U.S. Territories[1] that have applications approved by the Corporation according to a population-based formula.[2]

(2) One percent of available funds will be reserved for distribution to Indian tribes on a competitive basis.

(3) The Corporation will use any funds available under this part remaining after the award of the grants described in paragraphs (a) and (b) (1) and (2) of this section to make direct competitive grants to subdivisions of States, Indian tribes, public or private nonprofit organizations (including labor organizations), institutions of higher education, and Federal agencies. No more than one-third of the these remaining funds may be awarded to Federal agencies.

(c) *Allocation of AmeriCorps educational awards only.* The Corporation will determine on an annual basis the appropriate number of educational awards to make available for eligible applicants who have not applied for program assistance.

(d) *Effect of States' or Territories' failure to apply.* If a State or U.S. Territory does not apply for or fails to give adequate notice of its intent to apply for a formula-based grant as announced by the Corporation and published in applications and the Notice of Funds Availability, the Corporation will use the amount of that State's allotment to make grants to eligible entities to carry out AmeriCorps programs in that State or Territory. Any funds remaining from that State's allotment after making such grants will be reallocated to the States, Territories, and Indian tribes with approved AmeriCorps applications at the Corporation's discretion.

(e) *Effect of rejection of State application.* If a State's application for a formula-based grant is ultimately rejected by the Corporation pursuant to § 2522.320 of this chapter, the State's allotment will be available for redistribution by the Corporation to the States, Territories, and Indian Tribes with approved AmeriCorps applications as the Corporation deems appropriate.

(f) The Corporation will make grants for training, technical assistance and other special programs described in part 2524 of this chapter at the Corporation's discretion.

(g) *Matching funds.*—(1) *Requirements.* (i) The matching requirements for participant benefits are specified in § 2522.240(b)(5) of this chapter.

(ii) The Corporation share of other AmeriCorps program costs may not exceed 75 percent, whether the assistance is provided directly or as a subgrant from the original recipient of the assistance.

(iii) These matching requirements apply only to programs receiving assistance under parts 2521 through 2524 of this chapter.

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[1] The United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Palau (until such time as the Compact of Free Association with Palau is ratified).

[2] The amount allotted as a grant to each such territory or possession is equal to the ratio of each such Territory's population to the population of all such territories multipled by the amount of the one percent set-aside.

(2) *Calculation.* In providing for the remaining share of other AmeriCorps program costs, the program—

(i) Must provide for its share through a payment in cash or in kind, fairly evaluated, including facilities, equipment, or services; and

(ii) May provide for its share through State sources, local sources, or other Federal sources (other than funds made available by the Corporation).

(3) *Limitation on cost of health care.* A program may not count more than 85 percent of a cash payment for the cost of providing a health care policy toward its 15 percent remaining share under paragraph (g)(2)(i) of this section.

(4) *Waiver.* The Corporation reserves the right to waive, in whole or in part, the requirements of paragraph (g)(1) of this section if the Corporation determines that a waiver would be equitable due to a lack of available financial resources at the local level.

(h) *Administrative costs.* (1) The recipient of a direct grant or transfer of funds from the Corporation may spend no more than five percent of the grant or transferred funds on administrative costs.

(2) Rules on use. States or other grantmaking entities that make subgrants to programs may retain no more than one-half of the five percent maximum administrative costs allowed for each Corporation grant.

PART 2522—AMERICORPS PARTICIPANTS, PROGRAMS, AND APPLICANTS

Subpart A—Minimum Requirements and Program Types

Sec.

Subpart B—Participant Eligibility, Requirements, and Benefits

Subpart C—Application Requirements

Subpart D—Selection of AmeriCorps Programs

Subpart E—Evaluation Requirements

AUTHORITY: 42 U.S.C. 12501 *et seq.*

SOURCE: 59 FR 13796, Mar. 23, 1994, unless otherwise noted.

Subpart A—Minimum Requirements and Program Types

§2522.100 What are the minimum requirements that every AmeriCorps program, regardless of type, must meet?

Although a wide range of programs may be eligible to apply for and receive support from the Corporation, all AmeriCorps programs must meet certain minimum program requirements. These requirements apply regardless of whether a program is supported directly by the Corporation or through a subgrant. All AmeriCorps programs must: (a) Address educational, public safety, human, or environmental needs, and provide a direct and demonstrable benefit that is valued by the community in which the service is performed;

(b) Perform projects that are designed, implemented, and evaluated with extensive and broad-based local input, including consultation with representatives from the community served, participants (or potential participants) in the program, community-based agencies with a demonstrated record of experience in providing services, and local labor organizations representing employees of project sponsors (if such entities exist in the area to be served by the program);

(c) Obtain, in the case of a program that also proposes to serve as the project sponsor, the written concurrence of any local labor organization representing employees of the project sponsor who are engaged in the same or substantially similar work as that proposed to be carried out by the AmeriCorps participant;

(d) Establish and provide outcome objectives, including a strategy for achieving these objectives, upon which self-assessment and Corporation-assessment of progress can rest. Such assessment will be used to help determine the extent to which the program has had a positive impact: (1) On communities and persons served by the projects performed by the program;

(2) On participants who take part in the projects; and

(3) In such other areas as the program or Corporation may specify;

(e) Strengthen communities and encourage mutual respect and cooperation among citizens of different races, ethnicities, socioeconomic backgrounds, educational levels, both men and women and individuals with disabilities;

(f) Agree to seek actively to include participants and staff from the communities in which projects are conducted, and agree to seek program staff and participants of different races and ethnicities, socioeconomic backgrounds, educational levels, and genders as well as individuals with disabilities unless a program design requires emphasizing the recruitment of staff and participants who share a specific characteristic or background. In no case may a program violate the nondiscrimination, nonduplication and nondisplacement rules governing participant selection described in part 2540 of this chapter. In addition, programs are encouraged to establish, if consistent with the purposes of the program, an intergenerational component that combines students, out-of-school youths, and older adults as participants;

(g)(1) Determine the projects in which participants will serve and establish minimum qualifications that individuals must meet to be eligible to participate in the program; these qualifications may vary based on the specific tasks to be performed by participants. Regardless of the educational level or background of participants sought, programs are encouraged to select individuals who posses leadership potential and a commitment to the goals of the AmeriCorps program. In any case, programs must select participants in a non-partisan, non-political, non-discriminatory manner, ensuring fair access to participation. In addition, programs are required to ensure that they do not displace any existing paid employees as provided in part 2540 of this chapter. To this end, programs may not select any prospective participant who is or was previously employed by a prospective project sponsors within six months of the time of enrollment in the program;

(2) In addition, all programs are required to comply with any pre-service orientation or training period requirements established by the Corporation to assist in the selection of motivated

participants. Finally, all programs must agree to select a percentage (to be determined by the Corporation) of the participants for the program from among prospective participants recruited by the Corporation or State Commissions under part 2532 of this chapter. The Corporation may also specify a minimum percentage of participants to be selected from the national leadership pool established under §2522.210(c). The Corporation may vary either percentage for different types of AmeriCorps programs;

(h) Provide reasonable accommodation, including auxiliary aids and services (as defined in section 3(1) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(1)) based on the individualized need of a participant who is a qualified individual with a disability (as defined in section 101(8) of such Act (42 U.S.C. 12111(8)). For the purpose of complying with this provision, AmeriCorps programs may apply for additional financial assistance from the Corporation pursuant to §2524.40 of this chapter;

(i) Use service experiences to help participants achieve the skills and education needed for productive, active citizenship, including the provision, if appropriate, of structured opportunities for participants to reflect on their service experiences. In addition, all programs must encourage every participant who is eligible to vote to register prior to completing a term of service;

(j) Provide participants in the program with the training, skills, and knowledge necessary to perform the tasks required in their respective projects, including, if appropriate, specific training in a particular field and background information on the community, including why the service projects are needed;

(k) Provide support services—

(1) To participants who are completing a term of service and making the transition to other educational and career opportunities; and

(2) To those participants who are school dropouts in order to assist them in earning the equivalent of a high school diploma;

(l) Ensure that participants serving in approved AmeriCorps positions receive the living allowance and other benefits described in §§2522.240 through 2522.250 of this chapter;

(m) Describe the manner in which the AmeriCorps educational awards will be apportioned among individuals serving in the program. If a program proposes to provide such benefits to less than 100 percent of the participants in the program, the program must provide a compelling rationale for determining which participants will receive the benefits and which participants will not. AmeriCorps programs are strongly encouraged to offer alternative post-service benefits to participants who will not receive AmeriCorps educational awards, however AmeriCorps grant funds may not be used to provide such benefits;

(n) Agree to identify the program, through the use of logos, common application materials, and other means (to be specified by the Corporation), as part of a larger national effort and to participate in other activities such as common opening ceremonies (including the administration of a national oath or affirmation), service days, and conferences designed to promote a national identity for all AmeriCorps programs and participants, including those participants not receiving AmeriCorps educational awards. This provision does not preclude an AmeriCorps program from continuing to use its own name as the primary identification, or from using its name, logo, or other identifying materials on uniforms or other items;

(o) Agree to begin terms of service at such times as the Corporation may reasonably require and to comply with any restrictions the Corporation may establish as to when the program may take to fill an approved AmeriCorps position left vacant due to attrition;

(p) Comply with all evaluation procedures specified by the Corporation, as explained in §§2522.500 through 2522.560;

(q) In the case of a program receiving funding directly from the Corporation, meet and consult with the State Commission for the State in which the program operates, if possible, and submit a copy of the program application to the State Commission; and

(r) Address any other requirements as specified by the Corporation.

§2522.110 What types of programs are eligible to compete for AmeriCorps grants?

Types of programs eligible to compete for AmeriCorps grants include the following: (a) *Specialized skills programs.* (1) A service program that is targeted to address specific educational, public safety, human, or environmental needs and that—

(i) Recruits individuals with special skills or provides specialized pre-service training to enable participants to be placed individually or in teams in positions in which the participants can meet such needs; and

(ii) If consistent with the purposes of the program, brings participants together for additional training and other activities designed to foster civic responsibility, increase the skills of participants, and improve the quality of the service provided.

(2) A preprofessional training program in which students enrolled in an institution of higher education—

(i) Receive training in specified fields, which may include classes containing service-learning;

(ii) Perform service related to such training outside the classroom during the school term and during summer or other vacation periods; and

(iii) Agree to provide service upon graduation to meet educational, public safety, human, or environmental needs related to such training.

(3) A professional corps program that recruits and places qualified participants in positions—

(i) As teachers, nurses and other health care providers, police officers, early childhood development staff, engineers, or other professionals providing service to meet educational, public safety, human, or environmental needs in communities with an inadequate number of such professionals;

(ii) That may include a salary in excess of the maximum living allowance authorized in §2522.240(b)(2); and

(iii) That are sponsored by public or private nonprofit employers who agree to pay 100 percent of the salaries and benefits (other than any AmeriCorps educational award from the National Service Trust) of the participants.

(b) *Specialized service programs.* (1) A community service program designed to meet the needs of rural communities, using teams or individual placements to address the development needs of rural communities and to combat rural poverty, including health care, education, and job training.

(2) A program that seeks to eliminate hunger in communities and rural areas through service in projects—

(i) Involving food banks, food pantries, and nonprofit organizations that provide food during emergencies;

(ii) Involving the gleaning of prepared and unprepared food that would otherwise be discarded as unusable so that the usable portion of such food may be donated to food banks, food pantries, and other nonprofit organizations;

(iii) Seeking to address the long-term causes of hunger through education and the delivery of appropriate services; or

(iv) Providing training in basic health, nutrition, and life skills necessary to alleviate hunger in communities and rural areas.

(3) A program in which economically disadvantaged individuals who are between the ages of 16 and 24 years of age, inclusive, are provided with opportunities to perform service that, while enabling such individuals to obtain the education and employment skills necessary to achieve economic self-sufficiency, will help their communities meet—

(i) The housing needs of low-income families and the homeless; and

(ii) The need for community facilities in low-income areas.

(c) *Community-development programs.* (1) A community corps program that meets educational, public safety, human, or environmental needs and promotes greater community unity through the use of organized teams of participants of varied social and economic backgrounds, skill levels, physical and developmental capabilities, ages, ethnic backgrounds, or genders.

(2) A program that is administered by a combination of nonprofit organizations located in a low-income area, provides a broad range of services to residents of such an area, is governed by a board composed in significant part

of low-income individuals, and is intended to provide opportunities for individuals or teams of individuals to engage in community projects in such an area that meet unaddressed community and individual needs, including projects that would—

(i) Meet the needs of low-income children and youth aged 18 and younger, such as providing after-school 'safe-places', including schools, with opportunities for learning and recreation; or

(ii) Be directed to other important unaddressed needs in such an area.

(d) *Programs that expand service program capacity.* (1) A program that provides specialized training to individuals in service-learning and places the individuals after such training in positions, including positions as service-learning coordinators, to facilitate service-learning in programs eligible for funding under Serve-America.

(2) An AmeriCorps entrepreneur program that identifies, recruits, and trains gifted young adults of all backgrounds and assists them in designing solutions to community problems.

(e) *Campus-based programs.* A campus-based program that is designed to provide substantial service in a community during the school term and during summer or other vacation periods through the use of—

(1) Students who are attending an institution of higher education, including students participating in a work-study program assisted under part C of title IV of the Higher Education Act of 1965 (42 U.S.C. 2751 et seq.);

(2) Teams composed of such students; or

(3) Teams composed of a combination of such students and community residents.

(f) *Intergenerational programs.* An intergenerational program that combines students, out-of-school youths, and older adults as participants to provide needed community services, including an intergenerational component for other AmeriCorps programs described in this subsection.

(g) *Youth development programs.* A full-time, year-round youth corps program or full-time summer youth corps program, such as a conservation corps or youth service corps (including youth corps programs under subtitle I, the Public Lands Corps established under the Public Lands Corps Act of 1993, the Urban Youth Corps established under section 106 of the National and Community Service Trust Act of 1993, and other conservation corps or youth service corps that perform service on Federal or other public lands or on Indian lands or Hawaiian home lands), that:

(1) Undertakes meaningful service projects with visible public benefits, including natural resource, urban renovation, or human services projects;

(2) Includes as participants youths and young adults between the ages of 16 and 25, inclusive, including out-of-school youths and other disadvantaged youths (such as youths with limited basic skills, youths in foster care who are becoming too old for foster care, youths of limited English proficiency, homeless youths, and youths who are individuals with disabilities) who are between those ages; and

(3) Provides those participants who are youths and young adults with—

(i) Crew-based, highly structured, and adult-supervised work experience, life skills, education, career guidance and counseling, employment training, and support services; and

(ii) The opportunity to develop citizenship values and skills through service to their community and the United States.

(h) *Individualized placement programs.* An individualized placement program that includes regular group activities, such as leadership training and special service projects.

(i) *Other programs.* Such other AmeriCorps programs addressing educational, public safety, human, or environmental needs as the Corporation may designate in the application.

Subpart B—Participant Eligibility, Requirements, and Benefits

§ 2522.200 What are the eligibility requirements for AmeriCorps participants?

(a) An AmeriCorps participant must be 17 years of age or older at the commencement of service (unless the participant is in a program described in § 2522.110(g), in which case the participant must be between the ages of 16

and 25, inclusive, or in a program described in §2522.110(b)(3), in which case the participant must be between the ages of 16 and 24).

(b) In general, an AmeriCorps participant must either have a high school diploma or its equivalent (including an alternative diploma or certificate for those individuals with disabilities for whom such an alternative diploma or certificate is appropriate) or agree to obtain a high school diploma or its equivalent prior to using the educational award. However, if the program in which the individual seeks to become a participant conducts an independent evaluation demonstrating that an individual is incapable of obtaining a high school diploma or its equivalent, the Corporation may waive this requirement.

(c) Unless an individual is enrolled in an institution of higher education on an ability to benefit basis and is considered eligible for funds under section 484 of the Higher Education Act of 1965 (20 U.S.C. 1091), that individual may not have dropped out of elementary or secondary school in order to enroll as an AmeriCorps participant.

(d) An AmeriCorps participant must be a citizen or national of the United States or lawful permanent resident alien of the United States.

§2522.210 How are AmeriCorps participants recruited and selected?

(a) *Local recruitment and selection.* In general, AmeriCorps participants will be selected locally by an approved AmeriCorps program, and the selection criteria will vary widely among the different programs. Nevertheless, AmeriCorps programs must select their participants in a fair and non-discriminatory manner which complies with part 2540 of this chapter. In selecting participants, programs must also comply with the recruitment and selection requirements specified in this section.

(b)(1) *National and State recruitment and selection.* The Corporation and each State Commission will establish a system to recruit individuals who desire to perform national service and to assist the placement of these individuals in approved AmeriCorps positions, which may include positions available under titles I and II of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.). The national and state recruitment and placement system will be designed and operated according to Corporation guidelines.

(2) *Dissemination of information.* The Corporation and State Commissions will disseminate information regarding available approved AmeriCorps positions through cooperation with secondary schools, institutions of higher education, employment service offices, community-based organizations, State vocational rehabilitation agencies within the meaning of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) and other State agencies that primarily serve qualified individuals with disabilities, and other appropriate entities, particularly those organizations that provide outreach to disadvantaged youths and youths who are qualified individuals with disabilities.

(c) *National leadership pool*—(1) *Selection and training.* From among individuals recruited under paragraph (b) of this section or nominated by service programs, the Corporation may select individuals with significant leadership potential, as determined by the Corporation, to receive special training to enhance their leadership ability. The leadership training will be provided by the Corporation directly or through a grant, contract, or cooperative agreement as the Corporation determines.

(2) *Emphasis on certain individuals.* In selecting individuals to receive leadership training under this provision, the Corporation will make special efforts to select individuals who have served—

(i) In the Peace Corps;

(ii) As VISTA volunteers;

(iii) As participants in AmeriCorps programs receiving assistance under parts 2520 through 2524 of this chapter;

(iv) As participants in National Service Demonstration programs that received assistance from the Commission on National and Community Service; or

(v) As members of the Armed Forces of the United States and who were honorably discharged from such service.

(3) *Assignment.* At the request of a program that receives assistance, the Corporation may assign an individual who receives leadership training under paragraph (c)(1) of this section to work

with the program in a leadership position and carry out assignments not otherwise performed by regular participants. An individual assigned to a program will be considered to be a participant of the program.

§ 2522.220 What are the required terms of service for AmeriCorps participants, and may they serve for more than one term?

(a) *Term of service.* In order to be eligible for the educational award described in § 2522.240(a), participants serving in approved AmeriCorps positions must complete a term of service as defined in this section:

(1) *Full-time service.* 1,700 hours of service during a period of not less than nine months and not more than one year.

(2) *Part-time service.* 900 hours of service during a period of not more than two years, or, if the individual is enrolled in an institution of higher education while performing all or a portion of the service, not more than three years.

(3) *Reduced part-time term of service.* The Corporation may reduce the number of hours required to be served in order to receive an educational award for certain part-time participants serving in approved AmeriCorps positions. In such cases, the educational award will be reduced in direct proportion to the reduction in required hours of service. These reductions may be made for summer programs, for categories of participants in certain approved AmeriCorps programs and on a case-by-case, individual basis as determined by the Corporation.

(4) *Summer programs.* A summer program, in which less than 1700 hours of service are performed, are part-time programs.

(b) *Restriction on multiple terms.* An AmeriCorps participant may only receive the benefits described in §§ 2522.240 through 2522.250 for the first two successfully-completed terms of service, regardless of whether those terms were served on a full-, part-, or reduced part-time basis.

(c) *Eligibility for second term.* A participant will only be eligible to serve a second or additional term of service if that individual has received satisfactory performance review(s) for any previous term(s) of service in accordance with the requirements of paragraph (d) of this section. Mere eligibility for a second or further term of service in no way guarantees a participant selection or placement.

(d) *Participant performance review.* For the purposes of determining a participant's eligibility for a second or additional term of service and/or for an AmeriCorps educational award, each AmeriCorps program will evaluate the performance of a participant mid-term and upon completion of a participant's term of service. The end-of-term performance evaluation will assess the following: (1) Whether the participant has completed the required number of hours described in paragraph (a) of this section;

(2) Whether the participant has satisfactorily completed assignments, tasks or projects; and ′

(3) Whether the participant has met any other performance criteria which had been clearly communicated both orally and in writing at the beginning of the term of service.

(e) *Limitation.* The Corporation may set a minimum or maximum percentage of hours of a full-time, part-time, or reduced term of service described in paragraphs (a)(1),(a)(2), and (a)(3) of this section that a participant may engage in training, education, or other similar approved activities

(f) *Grievance procedure.* Any AmeriCorps participant wishing to contest a program's ruling of unsatisfactory performance may file a grievance according to the procedures set forth in part 2540 of this chapter. If that grievance procedure or subsequent binding arbitration procedure finds that the participant did in fact satisfactorily complete a term of service, then that individual will be eligible to receive an educational award and/or be eligible to serve a second term of service.

§ 2522.230 Under what circumstances may AmeriCorps participants be released from completing a term of service, and what are the consequences?

In general, AmeriCorps programs have the authority to release participants serving in approved AmeriCorps positions from completing a term of

service for two reasons: for compelling personal circumstances as demonstrated by the participant or for cause.

(a) *Release for compelling personal circumstances.* In general, AmeriCorps programs have the authority to define the circumstances by which a participant may be released for compelling personal circumstances. Programs wishing to release participants serving in approved AmeriCorps positions may elect either—

(1) To grant the release and provide a portion of the educational award equal to the portion of the term served; or

(2) To permit the participant to temporarily suspend performance of the term of service for a period of up to two years (and such additional period as the Corporation may allow for extenuating circumstances) and, upon completion of such period, to allow the participant to return to the program with which he or she was serving or to a similar AmeriCorps program with the assistance of the Corporation, in order to complete the remainder of the term of service and obtain the entire AmeriCorps educational award.

(b) *Release for cause.* AmeriCorps programs have the authority to define the circumstances by which a participant may be released for cause, except as specified in paragraph (b)(1) of this section. AmeriCorps programs must establish a written policy to be signed both by the participant and the program directors that clearly states the circumstances under which participants may be released for cause. Examples of conduct which programs may decide constitutes grounds for release for cause include chronic truancy, consistent failure to follow directions, and failure to adhere to program rules and guidelines. Under no circumstances may a participants disability constitute grounds for release for cause.

(1) *Circumstances requiring release for cause.* AmeriCorps programs are required to release for cause any participant who is convicted of a felony during a term of service. Any participant who is officially charged with a violent felony (e.g., rape or homicide), or sale or distribution of a controlled substance, or any participant convicted of the possession of a controlled substance, will have his or her service suspended without a living allowance and without receiving credit for hours missed. Any individual whose service was suspended because of being charged with a violent felony or sale or distribution of a controlled substance may resume service if he or she is found not guilty or if such charge is dismissed. Any individual whose service was suspended because of being convicted of a first offense of the possession of a controlled substance may resume service by demonstrating that he or she has enrolled in an approved drug rehabilitation program. A person convicted of a second or third possession of a controlled substance may resume service by demonstrating successful completion of a rehabilitation program. Any person that drops out of an AmeriCorps program without obtaining a release for compelling personal circumstances is considered to have been released for cause.

(2) *Impact of release for cause.* A participant released for cause may not receive any portion of the AmeriCorps educational award. In addition, any individual released for cause who wishes to reapply to the program from which he or she was released or to any other AmeriCorps program is required to disclose the release to that program. Failure to disclose to an AmeriCorps program any history of having been released for cause from another AmeriCorps program will render an individual ineligible to receive the AmeriCorps educational award, notwithstanding whether or not that individual successfully completes the term of service.

(3) *Grievance procedure.* Any AmeriCorps participant wishing to contest a program decision to release that participant for cause may file a grievance according to the procedures set forth in part 2540 of this chapter. Pending the resolution of such grievance procedure, a program may suspend the service of that participant. If the initial grievance procedure or subsequent binding arbitration proceedings find that there was not cause for release, the AmeriCorps program must reinstate the participant; moreover, the program must credit the participant with any service hours missed and pay

the participant the full amount of any living allowance the participant did not receive as a result of such suspension. The Corporation retains the discretion to determine whether Corporation funds may be used to pay the living allowance withheld during a participant's suspension.

§ 2522.240 What financial benefits do AmeriCorps participants serving in approved AmeriCorps positions receive?

(a) *AmeriCorps educational awards.* An individual serving in an approved AmeriCorps position will receive an educational award from the National Service Trust upon successful completion of each of up to two terms of service as defined in § 2522.220.

(b) *Living allowances—(1) Amount.* Subject to the provisions of this part, any individual who participates on a full-time basis in an AmeriCorps program carried out using assistance provided pursuant to § 2521.30 of this chapter, including an AmeriCorps program that receives educational awards only pursuant to § 2521.30(c) of this chapter, will receive a living allowance in an amount equal to or greater than the average annual subsistence allowance provided to VISTA volunteers under § 105 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4955). This requirement will not apply to any program that was in existence prior to September 21, 1993 (the date of the enactment of the National and Community Service Trust Act of 1993).

(2) *Maximum living allowance.* With the exception of a professional corps described in § 2522.110(a)(3), the AmeriCorps living allowances may not exceed 200 percent of the average annual subsistence allowance provided to VISTA volunteers under section 105 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4955). A professional corps AmeriCorps program may provide a stipend in excess of the maximum, subject to the following conditions: (i) Corporation assistance may not be used to pay for any portion of the allowance; and

(ii) The program must be operated directly by the applicant, selected on a competitive basis by submitting an application directly to the Corporation, and may not be included in a State's application for the AmeriCorps program funds distributed by formula, or competition described in §§ 2521.30 (a)(2) and (a)(3) of this chapter.

(3) *Living allowances for part-time participants.* Programs may, but are not required to, provide living allowances to individuals participating on a part-time basis (or a reduced term of part-time service authorized under § 2522.220(a)(3). Such living allowances should be prorated to the living allowance authorized in paragraph (b)(1) of this section and will comply with such restrictions therein.

(4) *Waiver or reduction of living allowance.* The Corporation may, at its discretion, waive or reduce the living allowance requirements if a program can demonstrate to the satisfaction of the Corporation that such requirements are inconsistent with the objectives of the program, and that participants will be able to meet the necessary and reasonable costs of living (including food, housing, and transportation) in the area in which the program is located.

(5) *Limitation on Federal share.* The Federal share, including Corporation and other Federal funds, of the total amount provided to an AmeriCorps participant for a living allowance is limited as follows: (i) In no case may the Federal share exceed 85% of the minimum required living allowance enumerated in paragraph (b)(1) of this section.

(ii) For professional corps described in paragraph (b)(2)(i) of this section, Corporation and other Federal funds may be used to pay for no portion of the living allowance.

(iii) If the minimum living allowance requirements has been waived or reduced pursuant to paragraph (b)(4) of this section and the amount of the living allowance provided to a participant has been reduced correspondingly—

(A) In general, the Federal share may not exceed 85% of the reduced living allowance; however,

(B) If a participant is serving in a program that provides room or board, the Corporation will consider on a case-by-case basis allowing the portion of that living allowance that may be paid using Corporation and other Federal funds to be between 85% and 100%.

§ 2522.250 What other benefits do AmeriCorps participants serving in approved AmeriCorps positions receive?

(a) *Child Care.* Grantees must provide child care through an eligible provider or a child care allowance in an amount determined by the Corporation to those full-time participants who need child care in order to participate.

(1) *Need.* A participant is considered to need child care in order to participate in the program if he or she: (i) Is the parent or legal guardian of, or is acting in loco parentis for, a child under 13 who resides with the participant;

(ii) Has a family income that does not exceed 75 percent of the State's median income for a family of the same size;

(iii) At the time of acceptance into the program, is not currently receiving child care assistance from another source, including a parent or guardian, which would continue to be provided while the participant serves in the program; and

(iv) Certifies that he or she needs child care in order to participate in the program.

(2) *Provider eligibility.* Eligible child care providers are those who are eligible child care providers as defined in the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858n(5)).

(3) *Child care allowance.* The amount of the child care allowance will be determined by the Corporation based on payment rates for the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858c(4)(A)).

(4) *Corporation share.* The Corporation will pay 100 percent of the child care allowance, or, if the program provides child care through an eligible provider, the actual cost of the care or the amount of the allowance, whichever is less.

(b) *Health care.* (1) Grantees must provide to all eligible participants who meet the requirements of paragraph (b)(2) of this section health care coverage that—

(i) Provides the minimum benefits determined by the Corporation;

(ii) Provides the alternative minimum benefits determined by the Corporation; or

(iii) Does not provide all of either the minimum or the alternative minimum benefits but that has a fair market value equal to or greater than the fair market value of a policy that provides the minimum benefits.

(2) *Participant eligibility.* A full-time participant is eligible for health care benefits if he or she is not otherwise covered by a health benefits package providing minimum benefits established by the Corporation at the time he or she is accepted into a program. If, as a result of participation, or if, during the term of service, a participant demonstrates loss of coverage through no deliberate act of his or her own, such as parental or spousal job loss or disqualification from Medicaid, the participant will be eligible for health care benefits.

(3) *Corporation share.* (i) Except as provided in paragraph (b)(3)(ii) of this section, the Corporation will pay up to 85% of the cost of health care coverage that includes the minimum or alternative minimum benefits and is not excessive in cost.

(ii) The Corporation will pay no share of the cost of a policy that does not provide the minimum or alternative minimum benefits described in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

Subpart C—Application Requirements

§ 2522.300 What are the application requirements for AmeriCorps program grants?

All eligible applicants seeking AmeriCorps program grants must—

(a) Provide a description of the specific program(s) being proposed, including the type of program and of how it meets the minimum program requirements described in § 2522.100; and

(b) Comply with any additional requirements as specified by the Corporation in the application package.

§ 2522.310 What are the application requirements for AmeriCorps educational awards only?

(a) Eligible applicants may apply for AmeriCorps educational awards only for one of the following eligible service

positions: (1) A position for a participant in an AmeriCorps program that:

(i) Is carried out by an entity eligible to receive support under part 2521 of this chapter;

(ii) Would be eligible to receive assistance under this part, based on criteria established by the Corporation, but has not applied for such assistance;

(2) A position facilitating service-learning in a program described in parts 2515 through 2519 of this chapter;

(3) A position involving service as a crew leader in a youth corps program or a similar position supporting an AmeriCorps program; and

(4) Such other AmeriCorps positions as the Corporation considers to be appropriate.

(b) Because programs applying only for AmeriCorps educational awards must, by definition, meet the same basic requirements as other approved AmeriCorps programs, applicants must comply with the same application requirements specified in § 2522.300.

§ 2522.320 May an applicant submit more than one application to the Corporation for the same project at the same time?

No. The Corporation will reject an application for a project if an application for funding or educational awards for the same project is already pending before the Corporation.

Subpart D—Selection of AmeriCorps Programs

§ 2522.400 How will the basic selection criteria be applied?

From among the eligible programs that meet the minimum program requirements and that have submitted applications to the Corporation, the Corporation must select the best ones to receive funding. Although there is a wide range of factors that must be taken into account during the selection process, there are certain fundamental selection criteria that apply to all programs in each grant competition, regardless of whether they receive funding or educational awards directly or through subgrants. States and other subgranting applicants are required to use these criteria during the competitive selection of subgrantees. The Corporation may adjust the relative weight given to each criterion. (Additional and more specific criteria will be published in the applications).

§ 2522.410 What are the basic selection criteria for AmeriCorps programs?

The Corporation will consider how well the program will be able to achieve the three impacts mentioned in paragraph (a) of this section as demonstrated by the program design, the capacity of the organization to carry it out and other factors relating to need. The Corporation will also consider the extent to which the program promotes the Corporation's goals; and the extent to which the program contributes to the overall diversity of programs desired by the Corporation. These criteria are discussed in this section. Additional detail relating to these criteria may be published in any notice of availability of funding.

(a) *Program impacts.* The Corporation will consider the extent to which the program: (1) Achieves direct and demonstrable results;

(2) Strengthens communities; and

(3) Promotes citizenship and increases educational opportunities for participants.

(b) *Program Criteria.*—(1) *Program design.* The Corporation will consider four factors relating to the program design: (i) The quality of the program proposed to be carried out directly by the applicant or supported by a grant from the applicant;

(ii) The innovative aspects of the AmeriCorps program;

(iii) The feasibility of replicating the program; and

(iv) The sustainability of the program, based on evidence such as the existence of strong and broad-based community support for the program and of multiple funding sources or private funding.

(2) *Organizational capacity.* The Corporation will also consider an organization's capacity to carry out the program based on—

(i) The quality of the leadership of the AmeriCorps program;

(ii) The past performance of the organization or program; and

(iii) The extent to which the program builds on existing programs.

(c) *Need criteria.* In selecting programs, the Corporation will take into consideration the extent to which projects address State-identified issue priorities (if the program will be funded out of formula funds) or national priorities (if the program will be funded out of competitive funds), and whether projects would be conducted in areas of need.

(1) *Issue priorities.* In order to concentrate national efforts on meeting certain educational, public safety, human, or environmental needs, and to achieve the other purposes of this Act, the Corporation will establish, and after review of the strategic plan approved by the Board, periodically alter priorities regarding the AmeriCorps programs that will receive assistance (funding or approved AmeriCorps positions) and the purposes for which such assistance may be used. These priorities will be applied to assistance provided on a competitive basis as described in §2521.30 of this chapter, and to any assistance provided through a subgrant of such funds.

(i) States must establish, and through the national service plan process described in part 2513 of this chapter, periodically alter priorities regarding the programs that will receive assistance (funding or approved AmeriCorps positions) provided on a formula basis as described in §2521.30(a)(2) of this chapter. The State priorities will be subject to Corporation review as part of the application process under part 2521 of this chapter.

(ii) The Corporation will provide advance notice to potential applicants of any AmeriCorps priorities to be in effect for a fiscal year. The notice will describe any alternation made in the priorities since the previous notice. If a program receives multi-year funding based on conformance to national or state priorities and such priorities are altered after the first year of funding, the program will not be adversely affected due to the change in priorities until the term of the grant is ended.

(2) *Areas of need.* Areas of need are: (i) Communities designated by the Federal government or States as empowerment zones or redevelopment areas, targeted for special economic incentives, or otherwise identifiable as having high concentrations of low-income people;

(ii) Areas that are environmentally distressed;

(iii) Areas adversely affected by Federal actions related to the management of Federal lands that result in significant regional job losses and economic dislocation;

(iv) Areas adversely affected by reductions in defense spending or the closure or realignment of military installations; and

(v) Areas that have an unemployment rate greater than the national average unemployment rate for the most recent 12 months for which satisfactory data are available.

(d) *Contribution to overall diversity of programs funded by the Corporation.* The Corporation will select programs that will help to achieve participant, program type, and geographic diversity across programs.

(e) *Additional considerations.* The Corporation may publish in any notice of availability of funding additional factors that it may take into consideration in selecting programs, including any additional priorities applicable to any or all funds.

§2522.420 Can a State's application for formula funds be rejected?

Yes. Formula funds are not an entitlement.

(a) *Notification.* If the Corporation rejects an application submitted by a State Commission under part 2550 of this chapter for funds described in §2521.30 of this chapter, the Corporation will promptly notify the State Commission of the reasons for the rejection of the application.

(b) *Revision.* The Corporation will provide a State Commission notified under paragraph (a) of this section with a reasonable opportunity to revise and resubmit the application. At the request of the State Commission, the Corporation will provide technical assistance to the State Commission as part of the resubmission process. The Corporation will promptly reconsider an application resubmitted under this paragraph.

(c) *Redistribution.* The amount of any State's allotment under §2521.30(a) of this chapter for a fiscal year that the

Corporation determines will not be provided for that fiscal year will be available for redistribution by the Corporation to the States, Territories and Indian Tribes with approved AmeriCorps applications as the Corporation deems appropriate.

Subpart E—Evaluation Requirements

§ 2522.500 What are the purposes of an evaluation?

Every evaluation effort should serve to improve program quality, examine benefits of service, or fulfill legislative requirements.

§ 2522.510 What types of evaluations are States, grant-making entities, and programs required to perform?

All grantees and subgrantees are required to perform internal evaluations which are ongoing efforts to assess performance and improve quality. Grantees and subgrantees may, but are not required to, arrange for independent evaluation which are assessments of program effectiveness by individuals who are not directly involved in the administration of the program. The cost of independent evaluations is allowable.

§ 2522.520 What types of internal evaluation activities are required of programs?

Programs are required to: (a) Continuously assess management effectiveness, the quality of services provided, and the satisfaction of both participants and persons served. Internal evaluation activities should seek frequent feedback and provide for quick correction of weaknesses. The Corporation encourages programs to use internal evaluation methods such as community advisory councils, participant advisory councils, peer reviews, quality control inspections, and customer and participant surveys;

(b) Track progress toward objectives. Objectives will be established by programs and approved by the Corporation. Programs must submit to the Corporation (or State or grantmaking entity as applicable) periodic performance reports and, as part of an annual report, an annual performance report;

(c) Collect and submit to the Corporation (through the State or grantmaking entity as applicable) the following data: (1) Information on participants including the total number of participants in the program, and the number of participants by race, ethnicity, age, gender, economic background, education level, ethnic group, disability classification, geographic region, and marital status;

(2) Information on services conducted in areas classified as empowerment zones (or redevelopment areas), in areas that are targeted for special economic incentives or otherwise identifiable as having high concentrations of low-income people, in areas that are environmentally distressed, in areas that are adversely affected by Federal actions related to the management of Federal lands, in areas that are adversely affected by reductions in defense spending, or in areas that have an unemployment rate greater than the national average unemployment rate;

(3) Other information as required by the Corporation; and

(d) Cooperate fully with all Corporation evaluation activities.

§ 2522.530 What types of activities are required of States or grantmaking entities to evaluate the effectiveness of their subgrantees?

In cases where a State or grantmaking entity is the direct grantee they will be required to: (a) Ensure that subgrantees comply with the requirements of this subpart;

(b) Track program performance in terms of progress towards pre-established objectives and ensure that corrective action is taken when necessary. Submit periodic performance reports and, as part of an annual report, an annual performance report to the Corporation for each subgrantee;

(c) Collect from programs and submit to the Corporation the descriptive information required in this subpart; and

(d) Cooperate fully with all Corporation evaluation activities.

§ 2522.540 How will the Corporation evaluate individual AmeriCorps programs?

The Corporation will evaluate programs based on the following: (a) The extent to which the program meets the

objectives established and agreed to by the grantee and the Corporation before the grant award;

(b) The extent to which the program is cost-effective; and

(c) The effectiveness of the program in meeting the following legislative objectives: (1) Providing direct and demonstrable services and projects that benefit the community by addressing educational, public safety, human, or environmental needs;

(2) Recruiting and enrolling diverse participants consistent with the requirements of part 2540 of this chapter, based on economic background, race, ethnicity, age, gender, marital status, education levels, and disability;

(3) Promoting the educational achievement of each participant based on earning a high school diploma or its equivalent and future enrollment in and completion of increasingly higher levels of education;

(4) Encouraging each participant to engage in public and community service after completion of the program based on career choices and participation in other service programs;

(5) Promoting an ethic of active and productive citizenship among participants;

(6) Supplying additional volunteer assistance to community agencies without providing more volunteers than can be effectively utilized;

(7) Providing services and activities that could not otherwise be performed by employed workers and that will not supplant the hiring of, or result in the displacement of, employed workers; and

(8) Other criteria determined and published by the Corporation.

§ 2522.550 What will the Corporation do to evaluate the overall success of the AmeriCorps programs?

(a) The Corporation will conduct independent evaluations of programs, including in-depth studies of selected programs. These evaluations will consider the opinions of participants and members of the community where services are delivered. Where appropriate these studies will compare participants with individuals who have not participated in service programs. These evaluations will: (1) Study the extent to which the national service impacts involved communities;

(2) Study the extent to which national service increases positive attitudes among participants regarding the responsibilities of citizens and their role in solving community problems;

(3) Study the extent to which national service enables participants to afford post-secondary education with fewer student loans;

(4) Determine the costs and effectiveness of different program models in meeting program objectives including full- and part-time programs, programs involving different types of national service, programs using different recruitment methods, programs offering alternative non-federally funded vouchers or post-service benefits, and programs utilizing individual placements and teams;

(5) Determine the impact of programs in each State on the ability of VISTA and National Senior Volunteer Corps, each regular and reserve component of the Armed Forces, and the Peace Corps to recruit individuals residing in that State; and

(6) Determine the levels of living allowances paid in all AmeriCorps programs and American Conservation and Youth Corps, individually, by State, and by region and determine the effects that such living allowances have had on the ability of individuals to participate in such programs.

(b) The Corporation will also determine by June 30, 1995: (1) Whether the State and national priorities designed to meet educational, public safety, human, or environmental needs are being addressed;

(2) Whether the outcomes of both stipended and nonstipended service programs are defined and measured appropriately;

(3) Whether stipended service programs, and service programs providing educational benefits in return for service, should focus on economically disadvantaged individuals or at risk youth, or whether such programs should include a mix of individuals, including individuals from middle and upper income families;

(4) The role and importance of stipends and educational benefits in

achieving desired outcomes in the service programs;

(5) The income distribution of AmeriCorps participants, to determine the level of participation of economically disadvantaged individuals. The total income of participants will be determined as of the date the participant was first selected to participate in a program and will include family total income unless the evaluating entity determines that the participant was independent at the time of selection. Definitions for ''independent'' and ''total income'' are those used in section 480(a) of the Higher Education Act of 1965;

(6) The amount of assistance provided under the AmeriCorps programs that has been expended for projects conducted in areas classified as empowerment zones (or redevelopment areas), in areas that are targeted for special economic incentives or are otherwise identifiable as having high concentrations of low-income people, in areas that are environmentally distressed or adversely affected by Federal actions related to the management of Federal lands, in areas that are adversely affected by reductions in defense spending, or in areas that have an unemployment rate greater than the national average unemployment rate for the most recent 12 months for which satisfactory data are available; and

(7) The implications of the results of these studies as appropriate for authorized funding levels.

§ 2522.560 Will information on individual participants be kept confidential?

(a) Yes. The Corporation will maintain the confidentiality of information regarding individual participants that is acquired for the purpose of the evaluations described in § 2522.540. The Corporation will disclose individual participant information only with the prior written consent of the participant. However, the Corporation may disclose aggregate participant information.

(b) Grantees and subgrantees that receive assistance under this chapter must comply with the provisions of paragraph (a) of this section.

PART 2523—AGREEMENTS WITH OTHER FEDERAL AGENCIES FOR THE PROVISION OF AMERICORPS PROGRAM ASSISTANCE

Sec.

AUTHORITY: 42 U.S.C. 12501 *et seq.*

SOURCE: 59 FR 13804, Mar. 23, 1994, unless otherwise noted.

§ 2523.10 Are Federal agencies eligible to apply for AmeriCorps program funds?

Yes. Federal agencies may apply for and receive AmeriCorps funds under parts 2521 and 2522 of this chapter, and they are eligible to receive up to one-third of the funds available for competitive distribution under § 2521.30(b)(3) of this chapter. The Corporation may enter into a grant, contract or cooperative agreement with another Federal agency to support an AmeriCorps program carried out by the agency. The Corporation may transfer funds available to it to other Federal agencies.

§ 2523.20 Which Federal agencies may apply for such funds?

The Corporation will consider applications only from Executive Branch agencies or departments. Bureaus, divisions, and local and regional offices of

such departments and agencies can only apply through the central department or agency; however, it is possible for the department or agency to submit an application proposing more than one program.

§2523.30 Must Federal agencies meet the requirements imposed on grantees under parts 2521 and 2522 of this chapter?

Yes, except as provided in §2523.90. Federal agency programs must meet the same requirements and serve the same purposes as all other applicants seeking support under part 2522 of this chapter.

§2523.40 For what purposes should Federal agencies use AmeriCorps program funds?

AmeriCorps funds should enable Federal agencies to establish programs that leverage agencies' existing resources and grant-making powers toward the goal of integrating service more fully into agencies' programs and activities. Agencies should plan to ultimately support new service initiatives out of their own budgets and appropriations.

§2523.50 What types of funds are Federal agencies eligible to receive?

Federal agencies may apply for planning and operating funds subject to the terms established by the Corporation in §2521.20 of this chapter, except that operating grants will be awarded with the expectation that the Federal agencies will support the proposed programs from their own budgets once the Corporation grant(s) expire.

§2523.60 May Federal agencies enter into partnerships or participate in consortia?

Yes. Such partnerships or consortia may consist of other Federal agencies, Indian Tribes, subdivisions of States, community based organizations, institutions of higher education, or other non-profit organizations. Partnerships and consortia must be approved by the Corporation.

§2523.70 Will the Corporation give special consideration to Federal agency applications that address certain needs?

Yes. The Corporation will give special consideration to those applications that address the national priorities established by the Corporation. The Corporation may also give special consideration to those applications that demonstrate the agency's intent to leverage its own funds through a Corporation-approved partnership or consortium, by raising other funds from Federal or non-Federal sources, by giving grantees incentives to build service opportunities into their programs, by committing appropriate in-kind resources, or by other means.

§2523.80 Are there restrictions on the use of Corporation funds?

Yes. The supplantation and nondisplacement provisions specified in part 2540 of this chapter apply to the Federal AmeriCorps programs supported with such assistance.

§2523.90 Is there a matching requirement for Federal agencies?

No. A Federal agency is not required to match funds in programs that receive support under this chapter. However, Federal agency subgrantees are required to match funds in accordance with the requirements of §2521.30(g) and §2522.240(b)(5) of this chapter.

§2523.100 Are participants in programs operated by Federal agencies Federal employees?

No. Participants in these programs have the same employee status as participants in other approved AmeriCorps programs, and are not considered Federal employees, except for the purposes of the Family and Medical Leave Act as specified in §2540.220(b) of this chapter.

§2523.110 Can Federal agencies submit multiple applications?

No. The Corporation will only consider one application from a Federal agency for each AmeriCorps competition. The application may propose more than one program, however, and

the Corporation may choose to fund any or all of those programs.

§ 2523.120 Must Federal agencies consult with State Commissions?

Yes. Federal agencies must provide a description of the manner in which the proposed AmeriCorps program(s) is coordinated with the application of the State in which the projects will be conducted. Agencies must also describe proposed efforts to coordinate AmeriCorps activities with State Commissions and other funded AmeriCorps programs within the State in order to build upon existing programs and not duplicate efforts.

PART 2524—AMERICORPS TECHNICAL ASSISTANCE AND OTHER SPECIAL GRANTS

Sec.

AUTHORITY: 42 U.S.C. 12501 *et seq.*

SOURCE: 59 FR 13805, Mar. 23, 1994, unless otherwise noted.

§ 2524.10 For what purposes will technical assistance and training funds be made available?

(a) To the extent appropriate and necessary, the Corporation may make technical assistance available to States, Indian tribes, labor organizations, organizations operated by young adults, organizations serving economically disadvantaged individuals, and other entities eligible to apply for assistance under parts 2521 and 2522 of this chapter that desire—

(1) To develop AmeriCorps programs; or

(2) To apply for assistance under parts 2521 and 2522 of this chapter or under a grant program conducted using such assistance.

(b) In addition, the Corporation may provide program development assistance and conduct, directly or by grant or contract, appropriate training programs regarding AmeriCorps in order to—

(1) Improve the ability of AmeriCorps programs assisted under parts 2521 and 2522 of this chapter to meet educational, public safety, human, or environmental needs in communities—

(i) Where services are needed most; and

(ii) Where programs do not exist, or are too limited to meet community needs, as of the date on which the Corporation makes the grant or enters into the contract;

(2) Promote leadership development in such programs;

(3) Improve the instructional and programmatic quality of such programs to build an ethic of civic responsibility;

(4) Develop the management and budgetary skills of program operators;

(5) Provide for or improve the training provided to the participants in such programs;

(6) Encourage AmeriCorps programs to adhere to risk management procedures, including the training of participants in appropriate risk management practices; and

(7) Assist in such other manner as the Corporation may specify.

§ 2524.20 What are the guidelines for program development assistance and training grants?

(a) *Eligibility.* States, Federal agencies, Indian tribes, public or private nonprofit agencies, institutions of higher education, for-profit businesses, and individuals may apply for assistance under this section.

(b) *Duration.* A grant made under this section will be for a term of up to one year and is renewable.

(c) *Application requirements.* Eligible applicants must comply with the requirements specified in the Corporation's application package.

§ 2524.30 What are the guidelines for challenge grants?

(a) *Purpose.* The purpose of these grants is to challenge high quality AmeriCorps programs to diversify their funding base by matching private dollars they have raised with Corporation

support. The Corporation will provide not more than $1 for each $1 raised in cash by the program from private sources in excess of amounts otherwise required to be provided by the program to satisfy the matching funds requirements specified under § 2521.30(g) of this chapter.

(b) *Eligibility.* Only Corporation grantees that meet all of the following eligibility criteria may apply for challenge grants: (1) They are funded under parts 2520 through 2523 of this chapter.

(2) They are high quality programs with demonstrated experience in establishing and implementing projects that provide benefits to participants and communities.

(3) They have operated with Corporation funds for at least six months.

(4) They have secured the minimum matching funds required by §§ 2521.30(g), 2522.240(b)(5), 2522.250(a)(4), and 2522.250(b)(2) of this chapter.

(c) *Allowable program activities.* Challenge grants are intended to provide special opportunities for national and community service programs to enroll additional participants or undertake other activities specified by the Corporation.

(d) *Application procedures.* Eligible applicants must comply with the requirements specified in the Corporation's application materials.

(e) *Limitation on use of the funds.* Each year the Corporation will establish a maximum award that a program may receive as a challenge grant.

(f) *Allocation of funds.* The Corporation will determine annually how much funding will be allocated to challenge grants from funds appropriated for AmeriCorps programs.

§ 2524.40 What are the guidelines for grants to involve persons with disabilities?

(a) *Purpose.* There are two general purposes for these grants: (1) To assist AmeriCorps grantees in placing applicants who require reasonable accommodation (as defined in section 101(9) of the Americans With Disabilities Act of 1990, 42 U.S.C. 12111(9)) or auxiliary aids and services (as defined in section 3(1) of such Act, 42 U.S.C. 12102(1)) in an AmeriCorps program; and

(2) To conduct outreach activities to individuals with disabilities to recruit them for participation in AmeriCorps programs.

(b) *Eligibility*—(1) *Placement, accommodation, and auxiliary services.* Eligibility for assistance under this part is limited to AmeriCorps programs that: (i) Receive competitive funding from the Corporation under § 2521.30(a)(3) or 2521.30(b)(3) of this chapter; and

(ii) Demonstrate that the program has received a substantial number of applications for placement from persons who are individuals with a disability and who require a reasonable accommodation (as defined in section 101(9) of the Americans with Disabilities Act of 1990), or auxiliary aids and services (as defined in section 3(1) of such Act) in order to perform national service; and

(iii) Demonstrate that additional funding would assist the program in placing a substantial number of such individuals with a disability as participants in projects carried out through the program.

(2) *Outreach.* Corporation grantees and any public or private nonprofit organization may apply for funds to conduct outreach to individuals with disabilities to recruit them for participation in AmeriCorps programs. Outreach funds can also be used by any organization to assist AmeriCorps programs in adapting their programs to encourage greater participation by individuals with disabilities.

(c) *Application procedures.* Eligible applicants must comply with the requirements specified in the Corporation's application materials.

§ 2524.50 What are the guidelines for assistance with disaster relief?

(a) *Purpose.* Disaster relief funds are intended to provide emergency assistance not otherwise available to enable national and community service programs to respond quickly and effectively to a Presidentially-declared disaster.

(b) *Eligibility.* Any AmeriCorps program (including youth corps, the National Civilian Community Corps, VISTA, and other programs authorized under the Domestic Volunteer Services Act) or grant making entity (such as a

State or Federal agency) that is supported by the Corporation may apply for disaster relief grants.

(c) *Application process.* Eligible applicants must comply with the requirements specified in the Corporation's application materials.

(d) *Waivers.* In appropriate cases, due to the limited nature of disaster activities, the Corporation may waive specific program requirements such as matching requirements and the provision of AmeriCorps educational awards for participants supported with disaster relief funds.

PART 2525—NATIONAL SERVICE TRUST: PURPOSE AND DEFINITIONS

Sec.

AUTHORITY: 42 U.S.C. 12601–12604.

§ 2525.10 What is the National Service Trust?

The National Service Trust is an account in the Treasury of the United States from which the Corporation makes payments of education awards, Stafford loan forgiveness awards, and pays interest that accrue on qualified student loans for AmeriCorps participants during terms of service in approved AmeriCorps positions.

[59 FR 30710, June 15, 1994]

§ 2525.20 Definitions.

In addition to the definitions in § 2510.20 of this chapter, the following definitions apply to terms used in parts 2525 through 2529 of this chapter:

Approved school-to-work program. The term *approved school-to-work program* means a school-to-work program officially approved by the Secretaries of the Departments of Education and Labor.

Cost of attendance. The term *cost of attendance* has the same meaning as in title IV of the Higher Education Act of 1965, as amended (20 U.S.C. 1070 et. seq.).

Education award. The term *education award* means the financial assistance available under parts 2526 through 2528 of this chapter for which an individual in an approved AmeriCorps position—except for an individual in a Stafford Loan Forgiveness program (SLF program)—may be eligible.

Holder. The term *holder* means—

(1) The original lender; or

(2) Any other entity to whom a loan is subsequently sold, transferred, or assigned if such entity acquires a legally enforceable right to receive payments from the borrower.

Institution of higher education. For the purposes of parts 2525 through 2529 of this chapter, the term *institution of higher education* has the same meaning given the term in section 481(a) of the Higher Education Act of 1965, as amended (20 U.S.C. 1088(a)).

Qualified student loan. The term *qualified student loan* means any loan made, insured, or guaranteed pursuant to title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et. seq.), other than a loan to a parent of a student pursuant to section 428B of such Act (20 U.S.C. 1078–2), and any loan made pursuant to title VII or VIII of the Public Service Health Act (42 U.S.C. 292a et. seq.).

Term of service. The term *term of service* means—

(1) For AmeriCorps participants other than VISTA volunteers, any of the terms of service specified in § 2522.220 of this chapter; and

(2) For VISTA volunteers, not less than a full year of service as a VISTA volunteer.

[59 FR 30710, June 15, 1994]

PART 2526—ELIGIBILITY TO RECEIVE AND USE EDUCATIONAL BENEFITS

Sec.

AUTHORITY: 42 U.S.C. 12601–12604.

SOURCE: 59 FR 30711, June 15, 1994, unless otherwise noted.

§ 2526.10 What types of AmeriCorps educational benefits are available?

Individuals serving in approved AmeriCorps positions may be eligible to receive either AmeriCorps education awards or Stafford loan forgiveness awards, but may not receive both awards for the same term of service.

§ 2526.20 Who is eligible to receive a full education award from the National Service Trust?

(a) *General.* To receive a full education award from the National Service Trust, an AmeriCorps participant must meet the eligibility requirements for, and successfully complete the required term of service in, an approved AmeriCorps position, including approved AmeriCorps positions in the VISTA program established by the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et. seq.) and the National Civilian Community Corps program established by the National and Community Service Act of 1990.

(b) *Conditions.* (1) For any term of service, a VISTA Volunteer who successfully completes his or her required term of service is only eligible to receive an education award from the National Service Trust if he or she does not accept the postservice stipend authorized under section 105(a)(1) of the Domestic Volunteer Service Act of 1973.

(2) For any term of service, a National Civilian Community Corps participant who successfully completes his or her required term of service is only eligible to receive an education award from the National Service Trust if he or she does not accept the alternative benefit described in section 158(g) of the National and Community Service Act of 1990.

§ 2526.30 Who is eligible to receive a full Stafford loan forgiveness award from the National Service Trust?

An individual who successfully completes a term of service in an approved AmeriCorps position in a Stafford Loan Forgiveness program is eligible to receive a full Stafford loan forgiveness award.

§ 2526.40 Is an AmeriCorps participant who does not complete a term of service eligible to receive a pro-rated education or Stafford loan forgiveness award?

(a) An individual who is released from a term of service for compelling personal circumstances, in accordance with § 2522.230(a) of this chapter, is eligible to receive a pro-rated education or Stafford loan forgiveness award as determined according to § 2527.10(d)(1) of this chapter if—

(1) The individual completed at least fifteen percent of his or her required term of service prior to the release; and

(2) The program chooses to provide the individual with a pro-rated education or Stafford loan forgiveness award pursuant to § 2522.230(a)(1) of this chapter rather than permitting the individual to complete the remainder of the term of service after a temporary suspension of service pursuant to § 2522.230(a)(2) of this chapter.

(b) Programs are encouraged, when appropriate, to suspend service rather than offer prorated educational benefits.

(c) An individual who is released from a term of service for cause in accordance with § 2522.230(b) of this chapter is not eligible for any portion of an education or Stafford loan forgiveness award.

(d) A VISTA volunteer who does not complete a term of service as a result of the early closure of the project in which he or she is serving is eligible to receive a pro-rated education award as

determined according to §2527.10(d)(1) of this chapter.

§ 2526.50 What conditions must an individual who has received an education award meet in order to use that education award?

An individual who receives an education award is eligible to use the award if the individual—

(a) Has received a high school diploma or its equivalent, is enrolled at an institution of higher education, or has received a waiver based on an individual education assessment conducted by the AmeriCorps program in which the individual participated;

(b) Is a citizen, national, or permanent resident alien of the United States; and

(c) Is not eligible to use the education award under §2526.40 as a result of a conviction of the possession or sale of a controlled substance.

§ 2526.60 How do convictions for the possession or sale of controlled substances affect an education award recipient's ability to use that award?

(a) Except as provided in paragraph (b) of this section, a recipient of an education award who is convicted under pertinent Federal or State law of the possession or sale of a controlled substance is not eligible to use his or her education award from the date of the conviction until the end of a specified time period, which is determined based on the type of conviction as follows:

(1) For conviction of the possession of a controlled substance, the ineligibility periods are—

(i) One year for a first conviction;

(ii) Two years for a second conviction; and

(iii) For a third or subsequent conviction, indefinitely, as determined by the Corporation according to the following factors—

(A) Type of controlled substance;

(B) Amount of controlled substance;

(C) Whether firearms or other dangerous weapons were involved in the offense;

(D) Nature and extent of any other criminal record;

(E) Nature and extent of any involvement in trafficking of controlled substances;

(F) Length of time between offenses;

(G) Employment history;

(H) Service to the community;

(I) Recommendations from community members and local officials, including experts in substance abuse and treatment; and

(J) Any other relevant aggravating or ameliorating circumstances.

(2) For conviction of the sale of a controlled substance, the ineligibility periods are—

(i) Two years for a first conviction; and

(ii) Two years plus such additional time as the Corporation determines as appropriate for second and subsequent convictions, based on the factors set forth in paragraphs (a)(1)(iii) (A) through (J) of this section.

(b) (1) If the Corporation determines that an individual who has had his or her eligibility to use the education award suspended pursuant to paragraph (a) of this section has successfully completed a legitimate drug rehabilitation program, or in the case of a first conviction that the individual has enrolled in a legitimate drug rehabilitation program, the individual's eligibility to use the education award will be restored.

(2) In order for the Corporation to determine that the requirements of paragraph (b)(1) of this section have been met—

(i) The drug rehabilitation program must be recognized as legitimate by appropriate Federal, State or local authorities; and

(ii) The individual's enrollment in or successful completion of the legitimate drug rehabilitation program must be certified by an appropriate official of that program.

§ 2526.70 What is the time period during which an individual must use an education award?

(a) *General requirement.* An individual must use an education award within seven years of the date on which the individual successfully completes a term of service, unless the individual applies for and receives an extension in

accordance with the requirements of paragraph (b) of this section.

(b) *Extensions.* In order to receive an extension of the seven-year time period for using an education award, an individual must apply to the Corporation for an extension prior to the end of that time period. The Corporation will grant an application for an extension under the following circumstances:

(1) If the Corporation determines that an individual was performing another term of service in an approved AmeriCorps position during the seven-year period, the Corporation will grant an extension for a time period that is equivalent to the time period during which the individual was performing the other term of service.

(2) If the Corporation determines that an individual was unavoidably prevented from using the education award during the seven-year period, the Corporation will grant an extension for a period of time that the Corporation deems appropriate. An individual who is ineligible to use an education award as a result of the individual's conviction of the possession or sale of a controlled substance under §2526.40 is not considered to be unavoidably prevented from using the education award for the purposes of this paragraph.

§2526.80 How many education or Stafford loan forgiveness awards may an individual receive?

An individual may receive an education or Stafford loan forgiveness award for each of up to two terms of service. For the purposes of this section, full-time, part-time and reduced part-time terms of service described in §2522.220 of this chapter are each considered terms of service.

§2526.90 May an individual receive an education or Stafford loan forgiveness award and loan cancellations for the same service?

No. Although an education award may be used to repay qualified student loans pursuant to §2528.20 of this chapter, an individual may not receive an education or Stafford loan forgiveness award for a term of service and have that same service credited toward repayment of other student loans.

§2526.100 How are education and Stafford loan forgiveness awards treated in determining eligibility for financial assistance under the Higher Education Act of 1965, as amended?

Institutions of higher education shall consider education and Stafford loan forgiveness awards neither as income in calculating expected family contributions nor as estimated financial assistance in packaging assistance under the Higher Education Act of 1965, as amended (20 U.S.C. 1070 et seq.).

PART 2527—AMOUNT OF AMERICORPS EDUCATIONAL BENEFITS

AUTHORITY: 42 U.S.C. 12601–12604.

§2527.10 How are the amounts of the education and Stafford loan forgiveness awards determined?

(a) *Education awards for full-time service.* The education award for full-time service is equal to 90 percent of—

(1) One-half of an amount equal to the aggregate basic educational assistance allowance provided in 38 U.S.C. 3015(b)(1) (as in effect on July 28, 1993), for the period referred to in 38 U.S.C. 3013(a)(1) (as in effect on July 28, 1993), for a member of the Armed forces who is entitled to such an allowance under 38 U.S.C. 3011 and whose initial obligated period of active duty is two years; less

(2) One-half of the aggregate basic contribution required to be made by the member in 38 U.S.C. 3011(b) (as in effect on July 28, 1993).

(b) *Stafford loan forgiveness awards for full-time service.* The Stafford loan forgiveness award for a full-time participant in a Stafford Loan Forgiveness program is equal to 15 percent of that greater of—

(1) That participant's current Stafford loan obligations that were incurred during the final two years of that participant's undergraduate education; or

(2) That participant's current Stafford loan obligations that were incurred during the most recent two years of that participant's graduate education in a teaching program.

(c) *Part-time service.* The education and Stafford loan forgiveness awards

for part-time terms of service are equal to one-half of the corresponding full-time education and Stafford loan forgiveness awards described in paragraphs (a) and (b) of this section.

(d) *Incomplete or reduced terms of service.* (1) The education or Stafford loan forgiveness awards for individuals who are released from a term of service for compelling personal circumstances and are eligible for a pro-rated full- or part-time education or Stafford loan forgiveness award in accordance with the requirements in §2526.40 of this chapter, or for VISTA volunteers who are released due to the early of a project, are equal to the product of—

(i) The ratio of the portion of the term of service completed to the required term of service; and

(ii) The amount of the full- or part-time education award available for that term of service as determined pursuant to paragraph (a), (b) or (c) of this section.

(2) The education award for individuals serving in a reduced part-time term of service described in §2522.220 of this chapter is equal to the product of—

(i) The ratio of the number of hours of service required for the reduced part-time term of service to 900; and

(ii) The amount of the part-time education or Stafford loan forgiveness award as determined pursuant to paragraph (c) of this section.

(e) *Authority to aggregate awards.* An individual who serves two terms of service in a Stafford loan forgiveness program(s) may elect (prior to the end of the first such term of service) to aggregate the two Stafford loan forgiveness awards that the individual receives such that the individual receives a single Stafford loan forgiveness award at the end of the second term of service that is equal to the sum of the awards for each of the terms. An individual who wishes to aggregate his or her Stafford loan forgiveness awards must comply with the procedural requirements of §2528.60 of this chapter.

[59 FR 30712, June 15, 1994]

PART 2528—USES OF AND PROCEDURES FOR USING EDUCATIONAL BENEFITS

Sec.

AUTHORITY: 42 U.S.C. 12601–12604.

SOURCE: 59 FR 30713, June 15, 1994, unless otherwise noted.

§ 2528.10 For what purposes may education awards be used?

(a) Education awards may be used—

(1) To repay qualified student loans or portions thereof in accordance with §2528.20:

(2) To pay all or part of the cost of attendance at an institution of higher education in accordance with §§2528.30 through 2528.50; and

(3) To pay expenses incurred in participating in approved school-to-work programs in accordance with §2528.60.

(b) Education awards are divisible and may be applied to any combination of those loans, costs and expenses described in paragraph (a) of this section.

§ 2528.20 What are the procedural requirements for using education awards to repay qualified student loans?

(a) In order to use an education award to repay qualified student loans,

the recipient of the award must submit an application to the Corporation, in a manner prescribed by the corporation that:

(1) Identifies, or permits the Corporation to identify, the holder or holders of the loans;

(2) Indicates, or permits the Corporation to determine, the amounts of principal and interest outstanding on the loans;

(3) Specifies, if the outstanding balance of the principal on the loans is greater than the amount to be disbursed by the Corporation, which of the loans the individual prefers to have paid; and

(4) Contains whatever other information the Corporation may require.

(b) Upon receipt of an application under paragraph (a) of this section, the Corporation will notify each holder of a loan that has been designated for payment in the individual's application and will identify any information or documentation that the holder must provide to the corporation before the Corporation will make payment.

(c) When the Corporation receives all required information from the holder of the loan, the Corporation will pay the holder of the loan in accordance with the instructions in the application of the education award recipient and will notify the recipient of the payment.

(d) The Corporation may establish procedures to aggregate payments to holders of loans for more than a single individual.

§ 2528.30 What are the procedural requirements for using education awards to pay for all or part of the cost of attendance at an institution of higher education or to pay for expenses incurred in participating in an approved school-to-work program?

(a) In order to use an education award to pay for the cost of full-time or part-time attendance at an institution of higher education or to pay for expenses incurred in participating in an approved school-to-work program, the recipient of an award must submit an application to the institution of higher education or school-to-work program in which the individual is or will be enrolled, on a form prescribed by the Corporation, that contains such information as the Corporation may require to verify that the individual is a recipient of and eligible to use an education award.

(b) An institution of higher education or approved school-to-work program that receives one or more applications submitted in accordance with the requirements of paragraph (a) of this section shall submit to the Corporation, in a manner prescribed by the Corporation, a statement that—

(1) Identifies each eligible individual filing an application;

(2) Specifies the amounts for which such eligible individuals are qualified;

(3)(i) For institutions of higher education, certifies that—

(A) The institution of higher education has in effect a program participation agreement under section 487 of the Higher Education Act of 1965;

(B) The institution's eligibility to participate in any of the programs under title IV of such Act has not been limited, suspended, or terminated; and

(C) Individuals using education awards to pay for the cost of attendance at that institution do not comprise more than 15 percent of the total student population of the institution;

(ii) For school-to-work programs, certifies that the program has been approved by the Departments of Education and Labor;

(4) Indicates the costs of attendance or participation for any period(s) of enrollment for which the individual(s) are applying the education award(s); and

(5) Contains such provisions concerning financial compliance as the Corporation may require in the application.

(c) When the Corporation receives a statement from an institution of higher education or a school-to-work program in accordance with the requirements of paragraph (b) of this section, the Corporation will pay a first installment for the first period of enrollment, which shall be not more than half of the total monetary value of the education awards that the individuals identified on the institution's statement are scheduled to receive. The Corporation will pay installments for each subsequent period of enrollment

upon receipt of statements updating the information required under paragraph (b) of this section for the relevant period of enrollment.

§ 2528.40 Is there a limit on the amount of an individual's education award that the Corporation will disburse to an institution of higher education for a given period of enrollment?

Yes. The Corporation's disbursement from an individual's education award for any period of enrollment may not exceed the difference between—

(a) The individual's cost of attendance for that period of enrollment, determined in accordance with section 472 of the Higher Education Act of 1965; and

(b) The sum of—

(1) The student's estimated financial assistance for that period under part A of title IV of such Act; and

(2) The student's veterans' education benefits, determined in accordance with section 480(c) of such Act.

§ 2528.50 What happens if an individual withdraws or fails to complete the period of enrollment in an institution of higher education or school-to-work program for which the Corporation has disbursed all or part of that individual's education award?

(a) (1) An institution of higher education or school-to-work program that receives a disbursement of education award funds from the Corporation must have in effect a fair and equitable refund policy that includes procedures for providing a refund to the Corporation if an individual for whom the Corporation has disbursed education award funds withdraws or otherwise fails to complete the period of enrollment at that institution or program for which the assistance was provided.

(2) (i) For purposes of this section, an institution of higher education's refund policy is deemed ''fair and equitable'' if it is consistent with the requirements of paragraphs (b) and (c) of section 484B of the Higher Education Act of 1965, as amended.

(ii) For the purposes of this section, a school-to-work program's refund policy is deemed ''fair and equitable'' if it complies with any standards that may be developed by the Departments of Education and Labor.

(b) The Corporation credits to the individual's education award allocation in the National Service Trust the amount of any refund received for that individual under paragraph (a) of this section.

§ 2528.60 What are the procedural requirements for using a Stafford loan forgiveness award to repay Stafford loans?

(a) In order to apply a Stafford loan forgiveness award to the repayment of a Stafford loan(s), a participant in an AmeriCorps Stafford Loan Forgiveness program must submit an application to the Corporation that—

(1) Identifies the holder or holders of the participant's Stafford loans as described in § 2527.10(b) of this chapter;

(2) Indicates the amounts of outstanding principal and the rates of interest on those loans;

(3) Indicates, where appropriate, to which of the loans the individual would prefer to apply the Stafford loan forgiveness award;

(4) If the participant serves two terms of service in a Stafford Loan Forgiveness program, indicates whether the participant wishes to aggregate the Stafford loan forgiveness awards pursuant to § 2527.10(e) of this chapter; and

(5) Contains whatever other information the Corporation may require.

(b) When a participant receives a Stafford loan forgiveness award, the Corporation will notify each holder of a Stafford loan identified in the participant's application of the portion of the loan that the Corporation will repay and will identify any information or documentation that the holder must provide to the Corporation.

(c) When the Corporation receives all required information from the holder of the loan(s) pursuant to paragraph (b) of this section, the Corporation will pay the holder(s) an amount determined according to § 2527.10 of this chapter and will notify the participant of the payment.

(d) The Corporation may establish procedures to aggregate payments to holders of Stafford loans for more than one individual.

PART 2529—FORBEARANCE AND INTEREST PAYMENT PROCEDURES

Sec.

AUTHORITY: 42 U.S.C. 12601–12604.

SOURCE: 59 FR 30714, June 15, 1994, unless otherwise noted.

§ 2529.10 What are the procedural requirements for obtaining forbearance in the repayment of a qualified student loan during an individual's term of service in an approved AmeriCorps position?

(a) In order to obtain forbearance in the repayment of a qualified student loan during a term of service in an approved AmeriCorps position, an individual, other than a VISTA volunteer, must submit a written request to the holder of the loan.

(b) Upon receipt of a request under paragraph (a) of this section, the holder of a qualified student loan must contact the Corporation to verify that the individual is serving in an approved AmeriCorps position and to determine the period for which the holder must grant forbearance.

(c) The holder shall grant forbearance in the repayment of a qualified student loan for the period of an individual's required term of service after obtaining the verification required under paragraph (b) of this section.

(d) The holder shall promptly report to the Corporation each individual and loan for which it grants forbearance, the period for which it has granted forbearance, and the projected amount of interest that will accrue on the loan during the period of forbearance.

(e) If an individual who has obtained forbearance on a qualified student loan(s) does not complete his or her term of service, or if that individual's term of service is suspended, the Corporation will promptly notify the holder(s) of that loan(s).

(f) The holder is not required to grant forbearance in the repayment of qualified student loans for any period during which an individual's service in an approved AmeriCorps position has been suspended.

§ 2529.20 What are the procedural requirements for using National Service Trust funds to pay interest that accrues on a qualified student loan for which an individual has obtained forbearance?

The Corporation will make payments from the National Service Trust for interest that accrues on qualified student loans for which an individual, other than a VISTA volunteer, has obtained forbearance under § 2529.10 in accordance with the following requirements:

(a) *Completed terms of service.* (1) If an individual successfully completes a term of service, the Corporation will notify the holder of the individual's loan of the date of completion; the holder shall document the accrued interest expense to the Corporation; and the Corporation will pay all or a portion of the accrued interest and notify the individual and the holder of the loan of the payment.

(2) The percentage of the accrued interest that the Corporation will pay pursuant to paragraph (a)(1) of this section is equal to the lesser of—

(i) The product of—

(A) The required number of hours for the term of service divided by the total number of days for which forbearance was granted; and

(B) 365 divided by 17; and

(ii) 100.

(b) *Incomplete terms of service.* (1) If an individual does not successfully complete a term of service, but is eligible for a pro-rated educational benefits under § 2527.10(c) of this chapter or pro-rated Stafford Loan Forgiveness under § 2522.650(c) of this chapter, the Corporation will notify the holder of the loan if the date of the individual's release, the holder of the loan shall document to the Corporation the amount of accrued interest as of the date of the release, and the Corporation will pay all or a portion of such interest and notify the individual and the holder of the loan of the payment.

(2) The percentage of the accrued interest that the Corporation will pay pursuant to paragraph (b)(1) of this section is equal to lesser of—

(i) The product of—

(A) The number of hours of service completed divided by the number of days for which forbearance was granted; and

(B) 365 divided by 17; and

(ii) 100.

(3) The individual is responsible for the repayment of any accrued interest that is not paid by the Corporation pursuant to paragraph (b)(2) of this section.

(4) If the individual does not successfully complete the required term of service and is not eligible for a prorated education award under §2527.10(c) of this chapter or pro-rated Stafford Loan Forgiveness under §2522.605(c) of this chapter, the Corporation will notify the holder of the loan of the circumstances and date of the individual's release but will pay no portion of the accrued interest.

(c) *Suspended service.* The Corporation will not pay any interest expenses that accrue on an individual's qualified student loan(s) during a period of suspended service.

§2529.30 What additional student loan forbearance benefits are available for VISTA volunteers?

(a) VISTA volunteers may be eligible to have periodic installment payments of principal deferred for up to three years during periods of economic hardship, in accordance with the Higher Education Act of 1965, as amended.

(b) VISTA volunteers also may qualify for interest benefits on Stafford loans from the Department of Education under 34 CFR 682.301.

PART 2530—PURPOSES AND AVAILABILITY OF GRANTS FOR INVESTMENT FOR QUALITY AND INNOVATION ACTIVITIES

Sec.

AUTHORITY: 42 U.S.C. 12501 *et seq.*

2530.10 What are the purposes of the Investment for Quality and Innovation activities?

Investment for Quality and Innovation activities are designed to develop service infrastructure and improve the overall quality of national and community service efforts. Specifically, the Corporation will support innovative and model programs that otherwise may not be eligible for funding; and support other activities, such as training and technical assistance, summer programs, leadership training, research, promotion and recruitment, and special fellowships and awards. The Corporation may conduct these activities either directly or through grants to or contracts with qualified organizations.

[59 FR 13806, Mar. 23, 1994]

§2530.20 Funding priorities.

The Corporation may choose to set priorities (and to periodically revise such priorities) that limit the types of innovative and model programs and support activities it will undertake or fund in a given fiscal year. In setting these priorities, the Corporation will seek to concentrate funds on those activities that will be most effective and efficient in fulfilling the purposes of this part.

[59 FR 13806, Mar. 23, 1994]

PART 2531—INNOVATIVE AND SPECIAL DEMONSTRATION PROGRAMS

Sec.

AUTHORITY: 42 U.S.C. 12501 *et seq.*

SOURCE: 59 FR 13806, Mar. 23, 1994, unless otherwise noted.

§2531.10 Military Installation Conversion Demonstration programs.

(a) *Purposes.* The purposes of this section are to: (1) Provide direct and demonstrable service opportunities for economically disadvantaged youth;

(2) Fully utilize military installations affected by closures or realignments;

(3) Encourage communities affected by such closures or realignments to convert the installations to community use; and

(4) Foster a sense of community pride in the youth in the community.

(b) *Definitions.* As used in this section: (1) *Affected military installation.* The term *affected military installation* means a military installation described in section 325(e)(1) of the Job Training Partnership Act (29 U.S.C. 1662d(e)(1)).

(2) *Community.* The term *community* includes a county.

(3) *Convert to community use.* The term *convert to community use,* used with respect to an affected military installation, includes—

(i) Conversion of the installation or a part of the installation to—

(A) A park;

(B) A community center;

(C) A recreational facility; or

(D) A facility for a Head Start program under the Head Start Act (42 U.S.C. 9831 et seq.); and

(ii) Carrying out, at the installation, a construction or economic development project that is of substantial benefit, as determined by the Chief Executive Officer, to—

(A) The community in which the installation is located; or

(B) A community located within 50 miles of the installation or such further distance as the Chief Executive Officer may deem appropriate on a case-by-case basis.

(4) *Demonstration program.* The term *demonstration program* means a program described in paragraph (c) of this section.

(c) *Demonstration programs.* (1) *Grants*—The Corporation may make grants to communities and community-based agencies to pay for the Federal share of establishing and carrying out military installation conversion demonstration programs, to assist in converting to community use affected military installations located—

(i) Within the community; or

(ii) Within 50 miles of the community.

(2) *Duration.* In carrying out such a demonstration program, the community or community-based agency may carry out—

(i) A program of not less than 6 months in duration; or

(ii) A full-time summer program.

(d) *Use of Funds*—(1) *Stipend.* A community or community-based agency that receives a grant under paragraph (c) of this section to establish and carry out a project through a demonstration program may use the funds made available through such grant to pay for a portion of a stipend for the participants in the project.

(2) *Limitation on amount of stipend.* The amount of the stipend provided to a participant under paragraph (d)(1) of this section that may be paid using assistance provided under this section and using any other Federal funds may not exceed the lesser of—

(i) 85 percent of the total average annual subsistence allowance provided to VISTA volunteers under section 105 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4955); and

(ii) 85 percent of the stipend established by the demonstration program involved.

(e) *Participants*—(1) *Eligibility.* A person will be eligible to be selected as a participant in a project carried out through a demonstration program if the person is—

(i) Economically disadvantaged and between the ages of 16 and 24, inclusive;

(ii) In the case of a full-time summer program, economically disadvantaged and between the ages of 14 and 24; or

(iii) An eligible youth as described in section 423 of the Job Training Partnership Act (29 U.S.C. 1693).

(2) *Participation.* Persons desiring to participate in such a project must enter into an agreement with the sponsor of the project to participate—

(i) On a full-time or a part-time basis; and

(ii) For the duration referred to in paragraph (f)(2)(iii) of this section.

(f) *Application*—(1) *In general.* To be eligible to receive a grant under paragraph (c) of this section, a community or community-based agency must submit an application to the Chief Executive Officer at such time, in such manner, and containing such information as the Chief Executive Officer may require.

(2) *Contents.* At a minimum, such application must contain—

(i) A description of the demonstration program proposed to be conducted by the applicant;

(ii) A proposal for carrying out the program that describes the manner in which the applicant will—

(A) Provide preservice and inservice training, for supervisors and participants, that will be conducted by qualified individuals or qualified organizations;

(B) Conduct an appropriate evaluation of the program; and

(C) Provide for appropriate community involvement in the program;

(iii) Information indicating the duration of the program; and

(iv) An assurance that the applicant will comply with the nonduplication, nondisplacement and grievance procedure provisions of part 2540 of this chapter.

(g) *Limitation on Grant.* In making a grant under paragraph (c) of this section with respect to a demonstration program to assist in converting an affected military installation, the Corporation will not make a grant for more than 25 percent of the total cost of the conversion.

§ 2531.20 Special Demonstration Project for the Yukon-Kuskokwim Delta of Alaska.

(a) *Special Demonstration Project for the Yukon-Kuskokwim Delta of Alaska.* The President may award grants to, and enter into contracts with, organizations to carry out programs that address significant human needs in the Yukon-Kuskokwim delta region of Alaska.

(b) *Application.—(1) General requirements.* To be eligible to receive a grant or enter into a contract under paragraph (a) of this section with respect to a program, an organization must submit an application to the President at such time, in such manner, and containing such information as required.

(2) *Contents.* The application submitted by the organization must, at a minimum—

(i) Include information describing the manner in which the program will utilize VISTA volunteers, individuals who have served in the Peace Corps, and other qualified persons, in partnership with the local nonprofit organizations known as the Yukon-Kuskokwim Health Corporation and the Alaska Village Council Presidents;

(ii) Take into consideration—

(A) The primarily noncash economy of the region; and

(B) The needs and desires of residents of the local communities in the region; and

(iii) Include specific strategies, developed in cooperation with the Yupi'k speaking population that resides in such communities, for comprehensive and intensive community development for communities in the Yukon-Kuskokwim delta region.

§ 2531.30 Other innovative and model programs.

(a) The Corporation may support other innovative and model programs such as the following: (1) Programs, including programs for rural youth, described in parts 2515 through 2524 of this chapter;

(2) Employer-based retiree programs;

(3) Intergenerational programs;

(4) Programs involving individuals with disabilities providing service;

(5) Programs sponsored by Governors; and

(6) Summer programs carried out between May 1 and October 1 (which may also contain a year-round component).

(b) The Corporation will support innovative service-learning programs.

(c) Application procedures, selection criteria, timing, and other requirements will be announced in the FEDERAL REGISTER.

PART 2532—TECHNICAL ASSISTANCE, TRAINING, AND OTHER SERVICE INFRASTRUCTURE-BUILDING ACTIVITIES

AUTHORITY: 42 U.S.C. 12501 *et seq.*

§ 2532.10 Eligible activities.

The Corporation may support—either directly or through a grant, contract or agreement—any activity designed to meet the purposes described in part 2530 of this chapter. These activities include, but are not limited to, the following: (a) *Community-based agencies.*

The Corporation may provide training and technical assistance and other assistance to project sponsors and other community-based agencies that provide volunteer placements in order to improve the ability of such agencies to use participants and other volunteers in a manner that results in high-quality service and a positive service experience for the participants and volunteers.

(b) *Improve ability to apply for assistance.* The Corporation will provide training and technical assistance, where necessary, to individuals, programs, local labor organizations, State educational agencies, State Commissions, local educational agencies, local governments, community-based agencies, and other entities to enable them to apply for funding under one of the national service laws, to conduct high-quality programs, to evaluate such programs, and for other purposes.

(c) *Conferences and materials.* The Corporation may organize and hold conferences, and prepare and publish materials, to disseminate information and promote the sharing of information among programs for the purpose of improving the quality of programs and projects.

(d) *Peace Corps and VISTA training.* The Corporation may provide training assistance to selected individuals who volunteer to serve in the Peace Corps or a program authorized under title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 *et seq.*). The training will be provided as part of the course of study of the individual at an institution of higher education, involve service-learning, and cover appropriate skills that the individual will use in the Peace Corps or VISTA.

(e) *Promotion and recruitment.* The Corporation may conduct a campaign to solicit funds for the National Service Trust and other programs and activities authorized under the national service laws and to promote and recruit participants for programs that receive assistance under the national service laws.

(f) *Training.* The Corporation may support national and regional participant and supervisor training, including leadership training and training in specific types of service and in building the ethic of civic responsibility.

(g) *Research.* The Corporation may support research on national service, including service-learning.

(h) *Intergenerational support.* The Corporation may assist programs in developing a service component that combines students, out-of-school youths, and older adults as participants to provide needed community services.

(i) *Planning coordination.* The Corporation may coordinate community-wide planning among programs and projects.

(j) *Youth leadership.* The Corporation may support activities to enhance the ability of youth and young adults to play leadership roles in national service.

(k) *National program identity.* The Corporation may support the development and dissemination of materials, including training materials, and arrange for uniforms and insignia, designed to promote unity and shared features among programs that receive assistance under the national service laws.

(l) *Service-learning.* The Corporation will support innovative programs and activities that promote service-learning.

(m) *National youth service day*—(1) *Designation.* April 19, 1994, and April 18, 1995 are each designated as ''National Youth Service Day''. The President is authorized and directed to issue a proclamation calling on the people of the United States to observe the day with appropriate ceremonies and activities.

(2) *Federal activities.* In order to observe National Youth Service Day at the Federal level, the Corporation may organize and carry out appropriate ceremonies and activities.

(3) *Activities.* The Corporation may make grants to public or private nonprofit organizations with demonstrated ability to carry out appropriate activities, in order to support such activities on National Youth Service Day.

(n) *Clearinghouses*—(1) *Authority.* The Corporation may establish clearinghouses, either directly or through a grant or contract. Any service-learning

clearinghouse to be established pursuant to part 2518 of this chapter is eligible to apply for a grant under this section. In addition, public or private nonprofit organizations are eligible to apply for clearinghouse grants.

(2) *Function.* A Clearinghouse may perform the following activities: (i) Assist entities carrying out State or local community service programs with needs assessments and planning;

(ii) Conduct research and evaluations concerning community service;

(iii) Provide leadership development and training to State and local community service program administrators, supervisors, and participants; and provide training to persons who can provide such leadership development and training;

(iv) Facilitate communication among entities carrying out community service programs and participants;

(v) Provide information, curriculum materials, and technical assistance relating to planning and operation of community service programs, to States and local entities eligible to receive funds under this chapter;

(vi) Gather and disseminate information on successful community service programs, components of such successful programs, innovative youth skills curriculum, and community service projects;

(vii) Coordinate the activities of the clearinghouse with appropriate entities to avoid duplication of effort;

(viii) Make recommendations to State and local entities on quality controls to improve the delivery of community service programs and on changes in the programs under this chapter; and

(ix) Carry out such other activities as the Chief Executive Officer determines to be appropriate.

(o) *Assistance for Head Start.* The Corporation may make grants to, and enter into contracts and cooperative agreements with, public or nonprofit private agencies and organizations that receive grants or contracts under the Foster Grandparent Program (part B of title II of the Domestic Volunteer Service Act of 1973 (29 U.S.C. 5011 et seq.)), for projects of the type described in section 211(a) of such Act (29 U.S.C. 5011) operating under memoranda of agreement with the ACTION Agency, for the purpose of increasing the number of low-income individuals who provide services under such program to children who participate in Head Start programs under the Head Start Act (42 U.S.C. 9831 et seq.).

(p) *Other assistance.* The Corporation may support other activities that are consistent with the purposes described in part 2530 of this chapter.

[59 FR 13807, Mar. 23, 1994]

PART 2533—SPECIAL ACTIVITIES

Sec.
2533.10 National service fellowships.
2533.20 Presidential awards for service.

AUTHORITY: 42 U.S.C. 12501 *et seq.*

§ 2533.10 National service fellowships.

The Corporation may award national service fellowships on a competitive basis. Application procedures, selection criteria, timing and other requirements will be announced in the FEDERAL REGISTER.

[59 FR 13808, Mar. 23, 1994]

§ 2533.20 Presidential awards for service.

The President, acting through the Corporation, may make Presidential awards for service to individuals providing significant service, and to outstanding programs. Information about recipients of such awards will be widely disseminated. The President may provide such awards to any deserving individual or program, regardless of whether the individual is serving in a program authorized by this chapter or whether the program is itself authorized by this chapter. In no instance, however, may the award be a cash award.

[59 FR 13808, Mar. 23, 1994]

PART 2540—GENERAL ADMINISTRATIVE PROVISIONS

Subpart A—Requirements Concerning the Distribution and Use of Corporation Assistance

Sec.
2540.100 What restrictions govern the use of Corporation assistance?

AUTHORITY: 42 U.S.C. 12501 *et seq.*

SOURCE: 59 FR 13808, Mar. 23, 1994, unless otherwise noted.

Subpart A—Requirements Concerning the Distribution and Use of Corporation Assistance

§2540.100 What restrictions govern the use of Corporation assistance?

(a) *Supplantation.* Corporation assistance may not be used to replace State and local public funds that had been used to support programs of the type eligible to receive Corporation support. For any given program, this condition will be satisfied if the aggregate non-Federal public expenditure for that program in the fiscal year that support is to be provided is not less than the previous fiscal year.

(b) *Religious use.* Corporation assistance may not be used to provide religious instruction, conduct worship services, or engage in any form of proselytization.

(c) *Political activity.* Corporation assistance may not be used by program participants or staff to assist, promote, or deter union organizing; or finance, directly or indirectly, any activity designed to influence the outcome of a Federal, State or local election to public office.

(d) *Contracts or collective bargaining agreements.* Corporation assistance may not be used to impair existing contracts for services or collective bargaining agreements.

(e) *Nonduplication.* Corporation assistance may not be used to duplicate an activity that is already available in the locality of a program. And, unless the requirements of paragraph (f) of this section are met, Corporation assistance will not be provided to a private nonprofit entity to conduct activities that are the same or substantially equivalent to activities provided by a State or local government agency in which such entity resides.

(f) *Nondisplacement.* (1) An employer may not displace an employee or position, including partial displacement such as reduction in hours, wages, or employment benefits, as a result of the use by such employer of a participant in a program receiving Corporation assistance.

(2) A service opportunity will not be created under this chapter that will infringe in any manner on the promotional opportunity of an employed individual.

(3) A participant in a program receiving Corporation assistance may not perform any services or duties or engage in activities that would otherwise be performed by an employee as part of the assigned duties of such employee.

(4) A participant in any program receiving assistance under this chapter may not perform any services or duties, or engage in activities, that—

(i) Will supplant the hiring of employed workers; or

(ii) Are services, duties, or activities with respect to which an individual has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures.

(5) A participant in any program receiving assistance under this chapter may not perform services or duties

that have been performed by or were assigned to any—

(i) Presently employed worker;

(ii) Employee who recently resigned or was discharged;

(iii) Employee who is subject to a reduction in force or who has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures;

(iv) Employee who is on leave (terminal, temporary, vacation, emergency, or sick); or

(v) Employee who is on strike or who is being locked out.

§ 2540.110 Limitation on use of Corporation funds for administrative costs.

Not more than five percent of the amount of assistance provided to the original recipient of any grant or any transfer of assistance from the Corporation in any fiscal year may be used to pay for administrative costs incurred by—

(a) The original recipient of assistance; and

(b) Any subgrantee of that recipient.

Subpart B—Requirements Directly Affecting the Selection and Treatment of Participants

§ 2540.200 Under what circumstances may participants be engaged?

A State may not engage a participant to serve in any program that receives Corporation assistance unless and until amounts have been appropriated under section 501 of the Act (42 U.S.C. 12681) for the provision of AmeriCorps educational awards and for the payment of other necessary expenses and costs associated with such participant.

§ 2540.210 What provisions exist to ensure that Corporation-supported programs do not discriminate in the selection of participants and staff?

(a) An individual with responsibility for the operation of a project that receives Corporation assistance must not discriminate against a participant in, or member of the staff of, such project on the basis of race, color, national origin, sex, age, or political affiliation of such participant or member, or on the basis of disability, if the participant or member is a qualified individual with a disability.

(b) Any Corporation assistance constitutes Federal financial assistance for purposes of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), and constitutes Federal financial assistance to an education program or activity for purposes of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).

(c) An individual with responsibility for the operation of a project that receives Corporation assistance may not discriminate on the basis of religion against a participant in such project or a member of the staff of such project who is paid with Corporation funds. This provision does not apply to the employment (with Corporation assistance) of any staff member of a Corporation-supported project who was employed with the organization operating the project on the date the Corporation grant was awarded.

§ 2540.220 Under what circumstances and subject to what conditions are participants in Corporation-assisted programs eligible for family and medical leave?

(a) *Participants in State, local, or private nonprofits programs.* A participant in a State, local, or private nonprofit program receiving support from the Corporation is considered an eligible employee of the program's project sponsor under the Family and Medical Leave Act of 1993 (29 CFR part 825) if—

(1) The participant has served for at least 12 months and 1,250 hours during the year preceding the start of the leave; and

(2) The program's project sponsors engages in commerce or any industry or activity affecting commerce, and employs at least 50 employees for each working day during 20 or more calendar workweeks in the current or preceding calendar year.

(b) *Participants in Federal programs.* Participants in Federal programs operated by the Corporation or by another

Federal agency will be considered Federal employees for the purposes of the Family and Medical Leave Act if the participants have completed 12 months of service and the project sponsor is an employing agency as defined in 5 U.S.C 6381 *et seq.*; such participants therefore will be eligible for the same family and medical leave benefits afforded to such Federal employees.

(c) *General terms and conditions.* Participants that qualify as eligible employees under paragraphs (a) or (b) of this section are entitled to take up to 12 weeks of unpaid leave during a 12 month period for any of the following reasons (in the cases of both paragraphs (c)(1) and (2) of this section the entitlement to leave expires 12 months after the birth or placement of such child): (1) The birth of a child to a participant;

(2) The placement of a child with a participant for adoption or foster care;

(3) The serious illness of a participant's spouse, child or parent; or

(4) A participants serious health condition that makes that participant unable to perform his or her essential service duties (a serious health condition is an illness or condition that requires either inpatient care or continuing treatment by a health care provider).

(d) *Intermittent leave or reduced service.* The program, serving as the project sponsor, may allow a participant to take intermittent leave or reduce his or her service hours due to the birth of or placement of a child for adoption or foster care. The participant may also take leave to care for a seriously ill immediate family member or may take leave due to his or her own serious illness whenever it is medically necessary.

(e) *Alternate placement.* If a participant requests intermittent leave or a reduced service hours due to a serious illness or a family member's sickness, and the need for leave is foreseeable based on planned medical treatment, the program, or project sponsor may temporarily transfer the participant to an alternative service position if the participant: (1) Is qualified for the position; and

(2) Receives the same benefits such as stipend or living allowance and the position better accommodates the participants recurring periods of leave.

(f) *Certification of cause.* A program, or project sponsor may require that the participant support a leave request with a certification from the health care provider of the participant or the participant's family member. If a program sponsor requests a certification, the participant must provide it in a timely manner.

(g) *Continuance of coverage.* (1) If a State, local or private program provides for health insurance for the full-time participant, the sponsor must continue to provide comparable health coverage at the same level and conditions that coverage would have been provided for the duration of the participant's leave.

(2) If the Federal program provides health insurance coverage for the full-time participant, the sponsor must also continue to provide the same health care coverage for the duration of the participant's leave.

(h) *Failure to return.* If the participant fails to return to the program at the end of leave for any reason other than continuation, recurrence or onset of a serious health condition or other circumstances beyond his or her control, the program may recover the premium that he or she paid during any period of unpaid leave.

(i) *Applicability to term of service.* Any absence, due to family and medical leave, will not be counted towards the participant's term of service.

§ 2540.230 What grievance procedures must recipients of Corporation assistance establish?

State and local applicants that receive assistance from the Corporation must establish and maintain a procedure for the filing and adjudication of grievances from participants, labor organizations, and other interested individuals concerning programs that receive assistance from the Corporation. A grievance procedure may include dispute resolution programs such as mediation, facilitation, assisted negotiation and neutral evaluation. If the grievance alleges fraud or criminal activity, it must immediately be brought to the attention of the Corporation's inspector general.

(a) *Alternative dispute resolution.* (1) The aggrieved party may seek resolution through alternative means of dispute resolution such as mediation or facilitation. Dispute resolution proceedings must be initiated within 45 calendar days from the date of the alleged occurrence. At the initial session of the dispute resolution proceedings, the party must be advised in writing of his or her right to file a grievance and right to arbitration. If the matter is resolved, and a written agreement is reached, the party will agree to forego filing a grievance in the matter under consideration.

(2) If mediation, facilitation, or other dispute resolution processes are selected, the process must be aided by a neutral party who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the matter through a mutually achieved and acceptable written agreement. The neutral party may not compel a resolution. Proceedings before the neutral party must be informal, and the rules of evidence will not apply. With the exception of a written and agreed upon dispute resolution agreement, the proceeding must be confidential.

(b) *Grievance procedure for unresolved complaints.* If the matter is not resolved within 30 calendar days from the date the informal dispute resolution process began, the neutral party must again inform the aggrieving party of his or her right to file a formal grievance. In the event an aggrieving party files a grievance, the neutral may not participate in the formal complaint process. In addition, no communication or proceedings of the informal dispute resolution process may be referred to or introduced into evidence at the grievance and arbitration hearing. Any decision by the neutral party is advisory and is not binding unless both parties agree.

(c) *Time limitations.* Except for a grievance that alleges fraud or criminal activity, a grievance must be made no later than one year after the date of the alleged occurrence. If a hearing is held on a grievance, it must be conducted no later than 30 calendar days after the filing of such grievance. A decision on any such grievance must be made no later than 60 calendar days after the filing of the grievance.

(d) *Arbitration*—(1) *Arbitrator*—(i) *Joint selection by parties.* If there is an adverse decision against the party who filed the grievance, or 60 calendar days after the filing of a grievance no decision has been reached, the filing party may submit the grievance to binding arbitration before a qualified arbitrator who is jointly selected and independent of the interested parties.

(ii) *Appointment by Corporation.* If the parties cannot agree on an arbitrator within 15 calendar days after receiving a request from one of the grievance parties, the Corporations Chief Executive Officer will appoint an arbitrator from a list of qualified arbitrators.

(2) *Time Limits*—(i) *Proceedings.* An arbitration proceeding must be held no later than 45 calendar days after the request for arbitration, or, if the arbitrator is appointed by the Chief Executive Officer, the proceeding must occur no later than 30 calendar days after the arbitrator's appointment.

(ii) *Decision.* A decision must be made by the arbitrator no later than 30 calendar days after the date the arbitration proceeding begins.

(3) *The cost.* The cost of the arbitration proceeding must be divided evenly between the parties to the arbitration. If, however, a participant, labor organization, or other interested individual prevails under a binding arbitration proceeding, the State or local applicant that is a party to the grievance must pay the total cost of the proceeding and the attorney's fees of the prevailing party.

(e) *Suspension of placement.* If a grievance is filed regarding a proposed placement of a participant in a program that receives assistance under this chapter, such placement must not be made unless the placement is consistent with the resolution of the grievance.

(f) *Remedies.* Remedies for a grievance filed under a procedure established by a recipient of Corporation assistance may include—

(1) Prohibition of a placement of a participant; and

(2) In grievance cases where there is a violation of nonduplication or nondisplacement requirements and the employer of the displaced employee is the recipient of Corporation assistance—

(i) Reinstatement of the employee to the position he or she held prior to the displacement;

(ii) Payment of lost wages and benefits;

(iii) Re-establishment of other relevant terms, conditions and privileges of employment; and

(iv) Any other equitable relief that is necessary to correct any violation of the nonduplication or nondisplacement requirements or to make the displaced employee whole.

(g) *Suspension or termination of assistance.* The Corporation may suspend or terminate payments for assistance under this chapter.

(h) *Effect of noncompliance with arbitration.* A suit to enforce arbitration awards may be brought in any Federal district court having jurisdiction over the parties without regard to the amount in controversy or the parties' citizenship.

Subpart C—Other Requirements for Recipients of Corporation Assistance

§ 2540.300 What must be included in annual State reports to the Corporation?

(a) *In general.* Each State receiving assistance under this title must prepare and submit, to the Corporation, an annual report concerning the use of assistance provided under this chapter and the status of the national and community service programs in the State that receive assistance under this chapter. A State's annual report must include information that demonstrates the State's compliance with the requirements of this chapter.

(b) *Local grantees.* Each State may require local grantees that receive assistance under this chapter to supply such information to the State as is necessary to enable the State to complete the report required under paragraph (a) of this section, including a comparison of actual accomplishments with the goals established for the program, the number of participants in the program, the number of service hours generated, and the existence of any problems, delays or adverse conditions that have affected or will affect the attainment of program goals.

(c) *Availability of report.* Reports submitted under paragraph (a) of this section must be made available to the public on request.

§ 2540.310 Must programs that receive Corporation assistance establish standards of conduct?

Yes. Programs that receive assistance under this title must establish and stringently enforce standards of conduct at the program site to promote proper moral and disciplinary conditions.

§ 2540.320 How are participant benefits treated?

Section 142(b) of the Job Training Partnership Act (29 U.S.C. 1552(b)) shall apply to the programs conducted under this chapter as if such programs were conducted under the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*).

Subpart D—Suspension and Termination of Corporation Assistance

§ 2540.400 Under what circumstances will the Corporation suspend or terminate a grant or contract?

(a) *Suspension of a grant or contract.* In emergency situations, the Corporation may suspend a grant or contract for not more than calendar 30 days. Examples of such situations may include, but are not limited to: (1) Serious risk to persons or property;

(2) Violations of Federal, State or local criminal statutes; and

(3) Material violation(s) of the grant or contract that are sufficiently serious that they outweigh the general policy in favor of advance notice and opportunity to show cause.

(b) *Termination of a grant or contract.* The Corporation may terminate or revoke assistance for failure to comply with applicable terms and conditions of this chapter. However, the Corporation must provide the recipient reasonable notice and opportunity for a full and fair hearing, subject to the following conditions: (1) The Corporation will notify a recipient of assistance by letter or telegram that the Corporation intends to terminate or revoke assistance, either in whole or in part, unless the recipient shows good cause why

such assistance should not be terminated or revoked. In this communication, the grounds and the effective date for the proposed termination or revocation will be described. The recipient will be given at least 7 calendar days to submit written material in opposition to the proposed action.

(2) The recipient may request a hearing on a proposed termination or revocation. Providing five days notice to the recipient, the Corporation may authorize the conduct of a hearing or other meetings at a location convenient to the recipient to consider the proposed suspension or termination. A transcript or recording must be made of a hearing conducted under this section and be available for inspection by any individual.

PART 2541—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Subpart B—Pre-Award Requirements

Subpart C—Post Award Requirements

Subpart D—Changes, Property and Subawards

Subpart E—Reports, Records, Retention and Enforcement

Subpart F—After the Grant Requirements

AUTHORITY: 42 U.S.C. 4950 *et seq.* and 12501 *et seq.*

SOURCE: 59 FR 41598, Aug. 12, 1994, unless otherwise noted.

Subpart A—General

§ 2541.10 Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

§ 2541.20 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§ 2541.30 Definitions.

The following definitions apply to terms used in this part and part 2542 of this chapter.

Accrued expenditures. The term *accrued expenditures* means the charges incurred by the grantee during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subgrantees, subcontractors, and other payees; and

(3) Other amounts becoming owed under programs for which no current services or performance is required,

such as annuities, insurance claims, and other benefit payments.

Accrued income. The term *accrued income* means the sum of:

(1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers; and

(2) Amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

Acquisition cost. The term *acquisition cost* of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

Administrative requirements. The term *administrative requirements* means those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from ''programmatic'' requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

Awarding agency. The term *awarding agency* means:

(1) With respect to a grant, the Federal agency; and

(2) With respect to a subgrant, the party that awarded the subgrant.

Cash contributions. The term *cash contributions* means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

Contract. The term *contract* means (except as used in the definitions for ''grant'' and ''subgrant'' in this section and except where qualified by ''Federal'') a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

Cost sharing (or *matching*). The term *cost sharing* (or *matching*) means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

Cost-type contract. The term *cost-type contract* means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

Equipment. The term *equipment* means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment mentioned in this definition.

Expenditure report. The term *expenditure report* means:

(1) For nonconstruction grants, the SF–269 ''Financial Status Report'' (or other equivalent report);

(2) for construction grants, the SF–271 ''Outlay Report and Request for Reimbursement'' (or other equivalent report).

Federally recognized Indian tribal government. The term *federally recognized Indian tribal government* means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

Government. The term *government* means a State or local government or a federally recognized Indian tribal government.

Grant. The term *grant* means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides

services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

Grantee. The term *grantee* means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

Local government. The term *local government* means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937 (42 U.S.C. 1401 et seq.) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

Obligations. The term *obligations* means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

OMB. The term *OMB* means the United States Office of Management and Budget.

Outlays (expenditures). The term *outlays* (expenditures) means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

Percentage of completion method. The term *percentage of completion method* refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

Prior approval. The term *prior approval* means documentation evidencing consent prior to incurring specific cost.

Real property. The term *real property* means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Share. The term *share,* when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

State. The term *State* means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under the United States Housing Act of 1937.

Subgrant. The term *subgrant* means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of ''grant'' in this part.

Subgrantee. The term *subgrantee* means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Supplies. The term *supplies* means all tangible personal property other than ''equipment'' as defined in this part.

Suspension. The term *suspension* means, depending on the context, either—

(1) Temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant; or

(2) An action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 (3 CFR, 1986 Comp., p. 189) to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

Termination. The term *termination* means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. Termination does not include—

(1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period;

(2) Withdrawal of the unobligated balance as of the expiration of a grant;

(3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or

(4) Voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

Terms of a grant or subgrant mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

Third party in-kind contributions. The term *third party in-kind contributions* means property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

Unliquidated obligations for reports prepared on a cash basis. The term *unliquidated obligations for reports prepared on a cash basis* means the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

Unobligated balance. The term *unobligated balance* means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ 2541.40 Applicability.

(a) *General.* Subparts A through D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of § 2541.60, or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35, 95 Stat. 357) (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under title V, subtitle D, chapter 2, section 583—the Secretary's discretionary grant program) and titles I–III of the Job Training Partnership Act of 1982 (29 U.S.C. 1501 et seq.) and under the Public Health Services Act (42 U.S.C. 201 et seq.), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and part C of title V, Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act (42 U.S.C. 301 et seq.):

(i) Aid to Needy Families with Dependent Children (title IV–A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (title IV–D of the Act);

(iii) Foster Care and Adoption Assistance (title IV–E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (titles I, X, XIV, and XVI–AABD of the Act); and

(v) Medical Assistance (Medicaid) (title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act (42 U.S.C. 1751 et seq.):

(i) School Lunch (section 4 of the Act);

(ii) Commodity Assistance (section 6 of the Act);

(iii) Special Meal Assistance (section 11 of the Act);

(iv) Summer Food Service for Children (section 13 of the Act); and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act); and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section.

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits.

(9) Grants to local education agencies under 20 U.S.C. 236 through 241–1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children).

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) *Entitlement programs.* Entitlement programs enumerated in §2541.40(a) (3) through (8) are subject to subpart E of this part.

§2541.50 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in §2541.60.

§2541.60 Additions and exceptions.

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the FEDERAL REGISTER.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

Subpart B—Pre-Award Requirements

§2541.100 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for

subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF–424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

§2541.110 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372 (3 CFR, 1982 Comp., p. 197), ''Intergovernmental Review of Federal Programs,'' States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions;

(2) Repeat the assurance language in the statutes or regulations; or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect: New or revised Federal statutes or regulations; or a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§2541.120 Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered ''high risk'' if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance; or

(2) Is not financially stable; or

(3) Has a management system which does not meet the management standards set forth in this part; or

(4) Has not conformed to terms and conditions of previous awards; or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grantee or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions; and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

Subpart C—Post-Award Requirements

§ 2541.200 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

(1) Permit preparation of reports required by this part and the statutes authorizing the grant; and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as canceled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

§2541.210 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash on a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions; or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with §2541.410(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent

by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

§ 2541.220 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for—

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles:

For the costs of a	Use the principles in—
State, local or Indian tribal government	OMB Circular A–87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A–122 as not subject to that circular	OMB Circular A–122.
Educational institutions	OMB Circular A–21.
For-profit organization other than a hospital and an organization named in OMB Circular A–122 as not subject to that circular	48 CFR Part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

§ 2541.230 Period of availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF–269). The Federal agency may extend this deadline at the request of the grantee.

§ 2541.240 Matching or cost sharing.

(a) *Basic rule; costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by other cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) *Qualifications and exceptions*—(1) *Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in § 2541.250, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 2541.250(g).)

(5) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee); or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services*—(1) *Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services

are in a different line of work, paragraph (c)(1) of this section applies.

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching.

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2) (i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 2541.220, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§ 2541.250 Program income.

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported

activity, or earned only as a result of the grant agreement during the grant period. ''During the grant period'' is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income.* If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See §2541.340)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§2541.310 and 2541.320.

(g) *Use of program income.* Program income shall be deducted from outlays which may be both Federal and non-Federal as described in paragraphs (g)(1) and (2) of this section, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction.* Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) *Income after the award period.* There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

§2541.260 Non-Federal audit.

(a) *Basic rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C.7501–7) and Federal agency implementing regulations. The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act, that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subgrantee shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A–110, ''Uniform Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations'' have met the audit requirement. Commercial contractors (private for profit and private and governmental organizations) providing goods and services to State and local governments are not

required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A–110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, §2541.360 shall be followed.

Subpart D—Changes, Property and Subawards

§2541.300 Changes.

(a) *General.* Grantees and subgrantees are permitted to re budget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see §2541.220) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes.*—(1) *Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds $100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of §2541.360 but

does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget formal the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see §2541.220) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

§2541.310 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§2541.320 Equipment.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or

not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in §2541.250(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title.* The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third

party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow paragraph (e) of this section.

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§ 2541.330 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

§ 2541.340 Copyrights.

The Federal awarding agency reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§ 2541.350 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, ''Debarment and Suspension.''

§ 2541.360 Procurement.

(a) *States.* When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) of this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when—

(i) The employee, officer or agent;

(ii) Any member of his immediate family;

(iii) His or her partner; or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties

to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable; and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protester must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities); and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency

other than those specified in this paragraph (b)(12)(ii) will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of this section. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business;

(ii) Requiring unnecessary experience and excessive bonding;

(iii) Noncompetitive pricing practices between firms or between affiliated companies;

(iv) Noncompetitive awards to consultants that are on retainer contracts;

(v) Organizational conflicts of interest;

(vi) Specifying only a ''brand name'' product instead of allowing ''an equal'' product to be offered and describing the performance of other relevant requirements of the procurement; and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutory or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a ''brand name or equal'' description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed*—(1) *Procurement by small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in §2541.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals.* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and*

labor surplus area firms. (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see § 2541.220). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

(i) A grantee's or subgrantee's procurement procedures or operation fails

to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a ''brand name'' product; or

(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The ''bid guarantee'' shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A ''performance bond'' is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A ''payment bond'' is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled ''Equal Employment Opportunity,'' as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41

CFR chapter 60). (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a–7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of $2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2000, and in excess of $2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of $100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871).

[59 FR 41598, Aug. 12, 1994, as amended at 60 FR 19639, 19646, Apr. 19, 1995]

§2541.370 Subgrants.

(a) *States.* States shall follow State law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with §2541.400 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grantees.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) § 2541.100;

(2) § 2541.110;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR part 205, cited in § 2541.210; and

(4) § 2541.500.

Subpart E—Reports, Records, Retention and Enforcment

§ 2541.400 Monitoring and reporting program performance.

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) *Site visits.* Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance

report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

§ 2541.410 Financial reporting.

(a) *General.*—(1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies; or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extent required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decision making purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report.*—(1) *Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with paragraph (e)(2)(iii) of this section.

(2) *Accounting basis.* Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through an analysis of the documentation on hand.

(3) *Frequency.* The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) *Due date.* When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report.*—(1) *Form.* (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format

of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the ''Remarks'' section of the report.

(3) *Cash in hands of subgrantees.* When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement.*—(1) *Advance payments.* Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in paragraph (b)(3) of this section.

(e) *Outlay report and request for reimbursement for construction programs.*—(1) *Grants that support construction activities paid by reimbursement method.* (i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in paragraph (d) of this section, instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in paragraph (b)(3) of this section.

(2) *Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.* (i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by paragraphs (b) (3) and (4) of this section.

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in paragraph (d) of this section.

(iii) The Federal agency may substitute the Financial Status Report specified in paragraph (b) of this section for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by paragraph (b)(2) of this section.

§ 2541.420 Retention and access requirements for records.

(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement; or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in

certain kinds of contracts, see §2541.360(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) *Starting date of retention period.*—(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage charge back rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records.*—(1) *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records. Unless required by Federal, State, or

local law, grantees and subgrantees are not required to permit public access to their records.

§ 2541.430 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency;

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program;

(4) Withhold further awards for the program; or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable; and

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to ''Debarment and Suspension'' under E.O. 12549 (see § 2541.350).

§ 2541.440 Termination for convenience.

Except as provided in § 2541.430 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated; or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § 2541.430 or paragraph (a) of this section.

Subpart F—After the Grant Requirement

§ 2541.500 Closeout.

(a) *General.* The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) *Reports.* Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this time frame.

These may include but are not limited to:

(1) Final performance or progress report;

(2) Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF–271) (as applicable);

(3) Final request for payment (SF–270) (if applicable);

(4) Invention disclosure (if applicable);

(5) Federally-owned property report. In accordance with §2541.320(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§2541.510 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in §2541.420;

(d) Property management requirements in §§2541.3120 and 2541.320; and

(e) Audit requirements in §2541.410.

§2541.520 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements;

(2) Withholding advance payments otherwise due to the grantee; or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

PART 2542—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Subpart A—General

Subpart B—Effect of Action

Subpart C—Debarment

Subpart D—Suspension

Subpart E—Responsibilities of GSA, Agency and Participants

Subpart F—Drug-Free Workplace Requirements (Grants)

AUTHORITY: 42 U.S.C. 4951 *et seq.*, 5060 and 12644; E.O. 12549, 51 FR 6370, February 21, 1986 (3 CFR, 1986 Comp., p. 189).

SOURCE: 59 FR 41614, Aug. 12, 1994, unless otherwise noted.

Cross Reference: See also Office of Management and Budget notice published at 55 FR 21679, May 25, 1990, and the governmentwide common rule published at 53 FR 19161, May 26, 1988, and 60 FR 33036, June 26, 1995.

Subpart A—General

§ 2542.10 Purpose.

(a) Executive Order (E.O.) 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of E.O. 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the E.O. by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of ''ineligible'' in § 2542.20), and participants who have voluntarily excluded themselves from participation in covered transactions;

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) These regulations also implement Executive Order 12689 (3 CFR, 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Public Law 103–355, sec. 2455, 108 Stat. 3327) by—

(1) Providing for the inclusion in the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs* all persons proposed for debarment, debarred or suspended under the Federal Acquisition Regulation, 48 CFR Part 9, subpart 9.4; persons against which governmentwide exclusions have been entered under this part; and persons determined to be ineligible; and

(2) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion.

(d) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

[60 FR 33040, 33063, June 26, 1995]

§ 2542.20 Definitions.

The following definitions apply to this part:

Adequate evidence. The term *adequate evidence* means information sufficient to support the reasonable belief that a particular act or omission has occurred.

Affiliate. Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, *or*, a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

Agency. The term *agency* means any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

Civil judgment. The term *civil judgment* means the disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801–12).

Conviction. A judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

Debarment. The term *debarment* means an action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is ''debarred.''

Debarring official. The term *debarring official* means an official authorized to impose debarment. The debarring official is either:

(1) The agency head; or

(2) An official designated by the agency head.

Indictment. Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

Ineligible. The term *ineligible* means excluded from participation in Federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

Legal proceedings. Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

List of Parties Excluded from Federal Procurement and Nonprocurement Programs. A list compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Orders 12549 and 12689 and these regulations or 48 CFR part 9, subpart 9.4, persons who have been proposed for debarment under 48 CFR part 9, subpart 9.4, and those persons who have been determined to be ineligible.

Notice. The term *notice* means a written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

Participant. The term *participant* means any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of

or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

Person. The term *person* means any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: Foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

Preponderance of the evidence. The term *preponderance of the evidence* means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Principal. The term *principal* means an officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are principal investigators.

Proposal. The term *proposal* means a solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

Respondent. The term *respondent* means a person against whom a debarment or suspension action has been initiated.

State. The term *state* means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

Suspending official. The term *suspending official* means an official authorized to impose suspension. The suspending official is either:

(1) The agency head; or

(2) An official designated by the agency head.

Suspension. The term *suspension* means an action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is ''suspended.''

Voluntary exclusion (or) *voluntarily excluded.* The term *voluntary exclusion* (or) *voluntarily excluded* means a status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

[59 FR 41614, Aug. 12, 1994, as amended at 60 FR 33041, 33063, June 26, 1995]

§ 2542.30 Coverage.

(a) The regulations in this part apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of the regulations in this part such transactions will be referred to as ''covered transactions.''

(1) *Covered transaction.* For purposes of the regulations in this part, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction.* Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: Grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered

transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) *Lower tier covered transaction.* A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently $25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(*1*) Principal investigators.

(*2*) Providers of federally-required audit services.

(*3*) *Exceptions.* The following transactions are not covered:

(*i*) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(*ii*) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(*iii*) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(*iv*) Federal employment;

(*v*) Transactions pursuant to national or agency-recognized emergencies or disasters;

(*vi*) Incidental benefits derived from ordinary governmental operations; and

(*vii*) Other transactions where the application of these regulations would be prohibited by law.

(b) *Relationship to other sections.* This section describes the types of transactions to which a debarment or suspension under this part will apply. Subpart B, ''Effect of Action,'' § 2542.50, ''Debarment or suspension,'' sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in § 2542.30(a). Sections 2542.200 ''Scope of debarment,'' and 2542.280, ''Scope of suspension,'' govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal procurement activities.* In accordance with E.O. 12689 and section 2455 of Public Law 103–355, any debarment, suspension, proposed debarment or other governmentwide exclusion initiated under the Federal Acquisition Regulation (FAR) on or after August 25, 1995 shall be recognized by and effective for Executive Branch agencies and participants as an exclusion under this regulation. Similarly, any debarment, suspension or other governmentwide exclusion initiated under this regulation on or after August 25, 1995 shall be recognized by and effective for those agencies as a debarment or suspension under the FAR.

[59 FR 41614, Aug. 12, 1994, as amended at 60 FR 33041, 33063, June 26, 1995]

§ 2542.40 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and this part, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only

in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in this part.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

Subpart B—Effect of Action

§ 2542.100 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the Executive Branch of the Federal Government for the period of their debarment, suspension, or the period they are proposed for debarment under 48 CFR part 9, subpart 9.4. Accordingly, no agency shall enter into primary covered transactions with such excluded persons during such period, except as permitted pursuant to § 2542.130.

(b) *Lower tier covered transactions.* Except to the extent prohibited by law, persons who have been proposed for debarment under 48 CFR part 9, subpart 9.4, debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see § 2542.30(a)(1)(ii)) for the period of their exclusion.

(c) *Exceptions.* Debarment or suspension does not affect a person's eligibility for—

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

[60 FR 33041, 33063, June 26, 1995]

§ 2542.110 Ineligible persons.

Persons who are ineligible, as defined in § 2542.20, are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

§ 2542.120 Voluntary exclusion.

Persons who accept voluntary exclusions under § 2542.270 are excluded in accordance with the terms of their settlements. Corporation shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

§ 2542.130 Exception provision.

The Corporation may grant an exception permitting a debarred, suspended, or voluntarily excluded person, or a person proposed for debarment under 48 CFR part 9, subpart 9.4, to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and § 2542.100. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with § 2542.410(a).

[60 FR 33041, 33063, June 26, 1995]

§ 2542.140 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, proposed debarment under

48 CFR part 9, subpart 9.4, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible or voluntary excluded, except as provided in §2542.130.

[60 FR 33041, 33063, June 26, 1995]

§2542.150 Failure to adhere to restrictions.

(a) Except as permitted under §2542.130 or §2542.140, a participant shall not knowingly do business under a covered transaction with a person who is—

(1) Debarred or suspended;

(2) Proposed for debarment under 48 CFR part 9, subpart 9.4; or

(3) Ineligible for or voluntarily excluded from the covered transaction.

(b) Violation of the restriction under paragraph (a) of this section may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies as appropriate.

(c) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible, or voluntarily excluded from the covered transaction (See Appendix B of these regulations), unless it knows that the certification is erroneous. An agency has the burden of proof that a participant did knowingly do business with a person that filed an erroneous certification.

[60 FR 33041, 33063, June 26, 1995]

Subpart C—Debarment

§2542.200 General.

The debarring official may debar a person for any of the causes in §2542.210, using procedures established in §§2542.220 through 2542.260. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

§2542.210 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§2542.200 through 2542.260 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, the effective date of the Governmentwide debarment and suspension (nonprocurement) regulations, or a procurement debarment by any Federal agency taken pursuant to 48 CFR part 9, subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in § 2542.130 or § 2542.140;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 2542.270 or of any settlement of a debarment or suspension action; or

(5) Violation of any requirement of subpart F of this part, relating to providing a drug-free workplace, as set forth in § 2542.530 of this part.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

§ 2542.220 Procedures.

The Corporation shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§ 2542.230 through 2542.260.

§ 2542.230 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

§ 2542.240 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

(a) That debarment is being considered;

(b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(c) Of the cause(s) relied upon under § 2452.210 for proposing debarment;

(d) Of the provisions of §§ 2542.230 through 2542.260, and any other Corporation procedures, if applicable, governing debarment decision making; and

(e) Of the potential effect of a debarment.

§ 2542.250 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 2542.260 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c) (1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in §2542.130.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§2542.270 Settlement and voluntary exclusion.

(a) When in the best interest of the Government, the Corporation may, at any time, settle a debarment or suspension action.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see subpart E of this part).

§2542.280 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(1) Debarment for causes other than those related to a violation of the requirements of subpart F of this part generally should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed.

(2) In the case of a debarment for a violation of the requirements of subpart F of this part (see §2542.210(c)(5)), the period of debarment shall not exceed five years.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of §§2542.230 through 2542.260 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

§ 2542.290 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person under this part constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see §§ 2542.230 through 2542.260).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

Subpart D—Suspension

§ 2542.300 General.

(a) The suspending official may suspend a person for any of the causes in § 2542.310 using procedures established in §§ 2542.320 through 2542.350.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in § 2542.320; and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

§ 2542.310 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§ 2542.300 through 2542.350 upon adequate evidence:

(1) To suspect the commission of an offense listed in § 2542.300(a); or

(2) That a cause for debarment under § 2542.300 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ 2542.320 Procedures.

(a) *Investigation and referral.* Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the

suspending official may issue a notice of suspension.

(b) *Decisionmaking process.* The Corporation shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in §§ 2541.330 through 2542.350.

§ 2542.330 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under § 2542.310 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of §§ 2542.330 through 2542.350 and any other Corporation procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

§ 2542.340 Opportunity to contest suspension.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment; or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 2542.350 Suspending official's decision.

The suspending official may modify or terminate the suspension (for example, see § 2542.280(c) for reasons for reducing the period or scope of debatement or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any agency. The decision shall be rendered in accordance with the following provisions.

(a) *No additional proceedings necessary.* In actions: Based on an indictment, conviction, or civil judgment; in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of

fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent.

§ 2542.360 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ 2542.370 Scope of suspension.

The scope of a suspension is the same as the scope of a debarment (see § 2542.290) except that the procedures of §§ 2542.320 through 2542.350 shall be used in imposing a suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

§ 2542.400 GSA responsibilities.

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12549 and this part, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

§ 2542.410 Corporation responsibilities.

(a) The agency shall provide GSA with current information concerning debarments, suspension, determinations of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, the agency shall also provide GSA and OMB with information concerning all transactions in which the Corporation has granted exceptions under § 2542.130 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in § 2542.400(b) and of the exceptions granted under § 2542.130 within five working days after taking such actions.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) Agency officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded.

(e) Agency officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

§2542.420 Participants' responsibilities.

(a) *Certification by participants in primary covered transactions.* Each participant shall submit the certification in Appendix A of this part for it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, each participant may, but is not required to, check the Nonprocurement List for its principals. Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) *Certification by participants in lower tier covered transactions.* (1) Each participant shall require participants in lower tier covered transactions to include the certification in Appendix B of this part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants.

(c) *Changed circumstances regarding certification.* A participant shall provide immediate written notice to Corporation if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposals.

Subpart F—Drug-Free Workplace Requirements (Grants)

§2542.500 Purpose.

(a) The purpose of this subpart is to carry out the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.) by requiring that—

(1) A grantee, other than an individual, shall certify to the agency that it will provide a drug-free workplace;

(2) A grantee who is an individual shall certify to the agency that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

(b) Requirements implementing the Drug-Free Workplace Act of 1988 for contractors with the agency are found at 48 CFR part 9, subpart 9.4, part 23, subpart 23.5, and part 52, subpart 52.2.

§2542.510 Definitions.

(a) Except as amended in this section, the definitions of §2542.20 apply to this subpart.

(b) For purposes of this subpart—

(1) *Controlled substance.* The term *controlled substance* means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15;

(2) *Conviction.* The term *conviction* means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

(3) *Criminal drug statute.* The term *criminal drug statute* means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

(4) *Drug-free workplace.* The term *drug-free workplace* means a site for the performance of work done in connection with a specific grant at which employees of the grantee are prohibited

from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance;

(5) *Employee.* (i) The term *employee* means the employee of a grantee directly engaged in the performance of work under the grant, including:

(A) All direct charge employees;

(B) All indirect charge employees, unless their impact or involvement is insignificant to the performance of the grant; and

(C) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll.

(ii) This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces);

(6) *Federal agency (or agency).* The term *federal agency (or agency)* means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency;

(7) *Grant.* The term *grant* means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by a Federal agency directly to a grantee. The term grant includes block grant and entitlement grant programs, whether or not exempted from coverage under the grants management government-wide common rule on uniform administrative requirements for grants and cooperative agreements. The term does not include technical assistance that provides services instead of money, or other assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations; or any veterans' benefits to individuals, i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States;

(8) *Grantee.* The term *grantee* means a person who applies for or receives a grant directly from a Federal agency (except another Federal agency);

(9) *Individual.* The term *individual* means a natural person;

(10) *State.* The term *State* means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers the instrumentality to be an agency of the State government.

§ 2542.520 Coverage.

(a) This subpart applies to any grantee of the agency.

(b) This subpart applies to any grant, except where application of this subpart would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government. A determination of such inconsistency may be made only by the agency head or his/her designee.

(c) The provisions of subparts A, B, C, D and E of this part apply to matters covered by this subpart, except where specifically modified by this subpart. In the event of any conflict between provisions of this subpart and other provisions of this part, the provisions of this subpart are deemed to control with respect to the implementation of drug-free workplace requirements concerning grants.

§ 2542.530 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.

A grantee shall be deemed in violation of the requirements of this subpart if the agency head or his or her official designee determines, in writing, that—

(a) The grantee has made a false certification under § 2542.560;

(b) With respect to a grantee other than an individual—

(1) The grantee has violated the certification by failing to carry out the requirements of paragraphs (A) (a)–(g)

and/or (B) of the certification (Alternate I in Appendix C of this part); or

(2) Such a number of employees of the grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace; or

(c) With respect to a grantee who is an individual—

(1) The grantee has violated the certification by failing to carry out its requirements (Alternate II of Appendix C of this part); or

(2) The grantee is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity.

§2542.540 Effect of violation.

(a) In the event of a violation of this subpart as provided in §2542.520, and in accordance with applicable law, the grantee shall be subject to one or more of the following actions:

(1) Suspension of payments under the grant;

(2) Suspension or termination of the grant; and

(3) Suspension or debarment of the grantee under the provisions of this part.

(b) Upon issuance of any final decision under this part requiring debarment of a grantee, the debarred grantee shall be ineligible for award of any grant from any Federal agency for a period specified in the decision, not to exceed five years (see §2542.280(a)(2)).

§2542.550 Exception provision.

The agency head may waive with respect to a particular grant, in writing, a suspension of payments under a grant, suspension or termination of a grant, or suspension or debarment of a grantee if the agency head determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

§2542.560 Certification requirements and procedures.

(a) (1) As a prior condition of being awarded a grant, each grantee shall make the appropriate certification to the Federal agency providing the grant, as provided in Appendix C of this part.

(2) Grantees are not required to make a certification in order to continue receiving funds under a grant awarded before March 18, 1989, or under a no-cost time extension of such a grant. However, the grantee shall make a one-time drug-free workplace certification for a non-automatic continuation of such a grant made on or after March 18, 1989.

(b) Except as provided in this section, all grantees shall make the required certification for each grant. For mandatory formula grants and entitlements that have no application process, grantees shall submit a one-time certification in order to continue receiving awards.

(c) A grantee that is a State may elect to make one certification in each Federal fiscal year. States that previously submitted an annual certification are not required to make a certification for Fiscal Year 1990 until June 30, 1990. Except as provided in paragraph (d) of this section, this certification shall cover all grants to all State agencies from any Federal agency. The State shall retain the original of this statewide certification in its Governor's office and, prior to grant award, shall ensure that a copy is submitted individually with respect to each grant, unless the Federal agency has designated a central location for submission.

(d) (1) The Governor of a State may exclude certain State agencies from the statewide certification and authorize these agencies to submit their own certifications to Federal agencies. The statewide certification shall name any State agencies so excluded.

(2) A State agency to which the statewide certification does not apply, or a State agency in a State that does not have a statewide certification, may elect to make one certification in each Federal fiscal year. State agencies that previously submitted a State agency certification are not required to make a certification for Fiscal Year 1990 until June 30, 1990. The State agency shall retain the original of this State agency-wide certification in its central office and, prior to grant award, shall

ensure that a copy is submitted individually with respect to each grant, unless the Federal agency designates a central location for submission.

(3) When the work of a grant is done by more than one State agency, the certification of the State agency directly receiving the grant shall be deemed to certify compliance for all workplaces, including those located in other State agencies.

(e) (1) For a grant of less than 30 days performance duration, grantees shall have this policy statement and program in place as soon as possible, but in any case by a date prior to the date on which performance is expected to be completed.

(2) For a grant of 30 days or more performance duration, grantees shall have this policy statement and program in place within 30 days after award.

(3) Where extraordinary circumstances warrant for a specific grant, the grant officer may determine a different date on which the policy statement and program shall be in place.

§ 2542.570 Reporting of and employee sanctions for convictions of criminal drug offenses.

(a) When a grantee other than an individual is notified that an employee has been convicted for a violation of a criminal drug statute occurring in the workplace, it shall take the following actions:

(1) Within 10 calendar days of receiving notice of the conviction, the grantee shall provide written notice, including the convicted employee's position title, to every grant officer, or other designee on whose grant activity the convicted employee was working, unless a Federal agency has designated a central point for the receipt of such notifications. Notification shall include the identification number(s) for each of the Federal agency's affected grants.

(2) Within 30 calendar days of receiving notice of the conviction, the grantee shall do the following with respect to the employee who was convicted:

(i) Take appropriate personnel action against the employee, up to and including termination, consistent with requirements of the Rehabilitation Act of 1973, as amended; or

(ii) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health law enforcement, or other appropriate agency.

(b) A grantee who is an individual who is convicted for a violation of a criminal drug statute occurring during the conduct of any grant activity shall report the conviction, in writing, within 10 calendar days, to his or her Federal agency grant officer, or other designee, unless the Federal agency has designated a central point for the receipt of such notices. Notification shall include the identification number(s) for each of the Federal agency's affected grants.

(Approved by the Office of Management and Budget under control number 0991–0002).

Appendix A to Part 2542—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded,* as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

[60 FR 33042, 33063, June 26, 1995]

APPENDIX B TO PART 2542—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to

the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal,* and *voluntarily excluded,* as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

[60 FR 33042, 33063, June 26, 1995]

APPENDIX C TO PART 2542—CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass

transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. §812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of sub recipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant: Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

PART 2543—GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

SUBPART A—GENERAL

Sec.

SUBPART B—PRE-AWARD REQUIREMENTS

SUBPART C—POST-AWARD REQUIREMENTS

FINANCIAL AND PROGRAM MANAGEMENT

PROPERTY STANDARDS

PROCUREMENT STANDARDS

REPORTS AND RECORDS

TERMINATION AND ENFORCEMENT

SUBPART D—AFTER-THE-AWARD REQUIREMENTS

SUBPART E—STATUTORY COMPLIANCE

AUTHORITY: 42 U.S.C. 12501 et seq.

SOURCE: 60 FR 13055, Mar. 10, 1995, unless otherwise noted.

Subpart A—General

§ 2543.1 Purpose.

This Circular establishes uniform administrative requirements for Federal

grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. Federal awarding agencies shall not impose additional or inconsistent requirements, except as provided in Sections 2543.4, and 2543.14 or unless specifically required by Federal statute or executive order. Non-profit organizations that implement Federal programs for the States are also subject to State requirements.

§2543.2 Definitions.

(a) *Accrued expenditures* means the charges incurred by the recipient during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subrecipients, and other payees; and,

(3) Other amounts becoming owed under programs for which no current services or performance is required.

(b) *Accrued income* means the sum of:

(1) Earnings during a given period from

(i) Services performed by the recipient, and

(ii) Goods and other tangible property delivered to purchasers, and

(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(c) *Acquisition cost of equipment* means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(d) *Advance* means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

(e) *Award* means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

(f) *Cash contributions* means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

(g) *Closeout* means the process by which a Federal awarding agency determines that all applicable administrative actions and all required work of the award have been completed by the recipient and Federal awarding agency.

(h) *Contract* means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

(i) *Cost sharing or matching* means that portion of project or program costs not borne by the Federal Government.

(j) *Date of completion* means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which Federal sponsorship ends.

(k) *Disallowed costs* means those charges to an award that the Federal awarding agency determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

(l) *Equipment* means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, consistent with recipient policy, lower limits may be established.

(m) *Excess property* means property under the control of any Federal awarding agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

(n) *Exempt property* means tangible personal property acquired in whole or in part with Federal funds, where the Federal awarding agency has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

(o) *Federal awarding agency* means the Federal agency that provides an award to the recipient.

(p) *Federal funds authorized* means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

(q) *Federal share* of real property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

(r) *Funding period* means the period of time when Federal funding is available for obligation by the recipient.

(s) *Intangible property and debt instruments* means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

(t) *Obligations* means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

(u) *Outlays or expenditures* means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(v) *Personal property* means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

(w) *Prior approval* means written approval by an authorized official evidencing prior consent.

(x) *Program income* means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in paragraphs § 2543.24 (e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal awarding agency regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

(y) *Project costs* means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

(z) *Project period* means the period established in the award document during which Federal sponsorship begins and ends.

(aa) *Property* means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

(bb) *Real property* means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

(cc) *Recipient* means an organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the Federal awarding agency. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

(dd) *Research and development* means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. ''Research'' is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. ''Development'' is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(ee) *Small awards* means a grant or cooperative agreement not exceeding the small purchase threshold fixed at 41 U.S.C. 403(11) (currently $25,000).

(ff) *Subaward* means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of ''award'' in paragraph (e).

(gg) *Subrecipient* means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the Federal awarding agency.

(hh) *Supplies* means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (''subject inventions''), as defined in 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements.''

(ii) *Suspension* means an action by a Federal awarding agency that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Federal awarding agency. Suspension of an award is a separate action from suspension under Federal agency regulations implementing E.O.s 12549 and 12689, ''Debarment and Suspension.''

(jj) *Termination* means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

(kk) *Third party in-kind contributions* means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(ll) *Unliquidated obligations,* for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(mm) *Unobligated balance* means the portion of the funds authorized by the Federal awarding agency that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(nn) *Unrecovered indirect cost* means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

(oo) *Working capital advance* means a procedure where by funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

§ 2543.3 Effect on other issuances.

For awards subject to this Circular, all administrative requirements of codified program regulations, program manuals, handbooks and other non-regulatory materials which are inconsistent with the requirements of this Circular shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in Section § 2543.4.

§ 2543.4 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this Circular when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this Circular shall be permitted only in unusual circumstances. Federal awarding agencies may apply more restrictive requirements to a class of recipients when approved by OMB. Federal awarding agencies may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by Federal awarding agencies.

§ 2543.5 Subawards.

Unless sections of this Circular specifically exclude subrecipients from coverage, the provisions of this Circular shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals or other non-profit organizations. State and local government subrecipients are subject to the provisions of regulations implementing the grants management common rule, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' published at 53 FR 8034.

Subpart B—Pre-Award Requirements

§ 2543.10 Purpose.

Sections § 2543.11 through § 2543.17 prescribes forms and instructions and other pre-award matters to be used in applying for Federal awards.

§ 2543.11 Pre-award policies.

(a) Use of Grants and Cooperative Agreements, and Contracts. In each instance, the Federal awarding agency shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, ''substantial involvement is expected between the executive agency and the

State, local government, or other recipient when carrying out the activity contemplated in the agreement.'' Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) Public Notice and Priority Setting. Federal awarding agencies shall notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

§ 2543.12 Forms for applying for Federal assistance.

(a) Federal awarding agencies shall comply with the applicable report clearance requirements of 5 CFR part 1320, ''Controlling Paperwork Burdens on the Public,'' with regard to all forms used by the Federal awarding agency in place of or as a supplement to the Standard Form 424 (SF–424) series.

(b) Applicants shall use the SF–424 series or those forms and instructions prescribed by the Federal awarding agency.

(c) For Federal programs covered by E.O. 12372, ''Intergovernmental Review of Federal Programs,'' the applicant shall complete the appropriate sections of the SF–424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the Federal awarding agency or the *Catalog of Federal Domestic Assistance.* The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

(d) Federal awarding agencies that do not use the SF–424 form should indicate whether the application is subject to review by the State under E.O. 12372.

§ 2543.13 Debarment and suspension.

Federal awarding agencies and recipients shall comply with the nonprocurement debarment and suspension common rule implementing E.O.s 12549 and 12689, ''Debarment and Suspension.'' This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 2543.14 Special award conditions.

If an applicant or recipient:

(a) Has a history of poor performance,

(b) Is not financially stable,

(c) Has a management system that does not meet the standards prescribed in this Circular,

(d) Has not conformed to the terms and conditions of a previous award, or

(e) is not otherwise responsible, Federal awarding agencies may impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

§ 2543.15 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. Federal awarding agencies shall follow the provisions of E.O. 12770, ''Metric Usage in Federal Government Programs.''

§ 2543.16 Resource Conservation and Recovery Act.

Under the Act Resource Conservation and Recovery Act (42 U.S.C. 6962), any

State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with Section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247–254).

Accordingly, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

§ 2543.17 Certifications and representations.

Unless prohibited by statute or codified regulation, each Federal awarding agency is authorized and encouraged to allow recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

Subpart C—Post-Award Requirements

FINANCIAL AND PROGRAM MANAGEMENT

§ 2543.20 Purpose of financial and program management.

Sections 2543.21 through 2543.25 prescribe standards for financial management systems, methods for making payments and rules for: satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

§ 2543.21 Standards for financial management systems.

(a) Federal awarding agencies shall require recipients to relate financial data to performance data and develop unit cost information whenever practical.

(b) Recipients' financial management systems shall provide for the following:

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in § 2543.51. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101–453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, ''Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs.''

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable

Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Federal awarding agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) The Federal awarding agency may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, ''Surety Companies Doing Business With the United States.''

§ 2543.22 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain:

(1) Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and

(2) Financial management systems that meet the standards for fund control and accountability as established in § 2543.21. Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by the Federal awarding agency to the recipient.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients shall be authorized to submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

(d) Requests for Treasury check advance payment shall be submitted on SF–270, ''Request for Advance or Reimbursement,'' or other forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special Federal awarding agency instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) cannot be met. Federal awarding agencies may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, the Federal awarding agency shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients shall be authorized to submit request for reimbursement at least monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and the Federal awarding agency has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the Federal awarding agency may provide cash on a working capital advance basis. Under this procedure, the Federal awarding

agency shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, the Federal awarding agency shall reimburse the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by statute, Federal awarding agencies shall not withhold payments for proper charges made by recipients at any time during the project period unless:

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements, or

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A–129, ''Managing Federal Credit Programs.'' Under such conditions, the Federal awarding agency may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows:

(1) Except for situations described in paragraph (i)(2), Federal awarding agencies shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless:

(1) The recipient receives less than $120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the Federal awarding agency, it waives its right to recover the interest under CMIA.

(m) Except as noted elsewhere in this Circular, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. Federal agencies shall not require more than an original and two copies of these forms.

(1) SF–270, Request for Advance or Reimbursement. Each Federal awarding agency shall adopt the SF–270 as a standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. Federal awarding agencies, however, have the option of using this form for construction programs in lieu of the SF–271, ''Outlay Report and

Request for Reimbursement for Construction Programs.''

(2) SF–271, Outlay Report and Request for Reimbursement for Construction Programs. Each Federal awarding agency shall adopt the SF–271 as the standard form to be used for requesting reimbursement for construction programs. However, a Federal awarding agency may substitute the SF–270 when the Federal awarding agency determines that it provides adequate information to meet Federal needs.

§ 2543.23 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria.

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget when required by the Federal awarding agency.

(7) Conform to other provisions of this Circular, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of the Federal awarding agency.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If a Federal awarding agency authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of:

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation, or.

(2) The current fair market value. However, when there is sufficient justification, the Federal awarding agency may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award:

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching, or.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Federal awarding agency has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications.

(1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties.

(i) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.

§ 2543.24 Program income.

(a) Federal awarding agencies shall apply the standards set forth in this section in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) below, program income earned during the project period shall be retained by the recipient and, in accordance with Federal awarding agency regulations or the terms and conditions of the award, shall be used in one or more of the ways listed in the following:

(1) Added to funds committed to the project by the Federal awarding agency and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When an agency authorizes the disposition of program income as described in paragraph (b)(1) or (b)(2), program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3).

(d) In the event that the Federal awarding agency does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3) shall apply automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) shall apply automatically unless the awarding agency indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in § 2543.14.

(e) Unless Federal awarding agency regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by Federal awarding agency regulations or the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards. (See § 2543.28 through § 2543.36.)

(h) Unless Federal awarding agency regulations or the terms and condition of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to

program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

§ 2543.25 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon Federal awarding agency requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients shall request prior approvals from Federal awarding agencies for one or more of the following program or budget related reasons:

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the Federal awarding agency.

(6) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with OMB Circular A–21, ''Cost Principles for Institutions of Higher Education,'' OMB Circular A–122, ''Cost Principles for Non-Profit Organizations,'' or 45 CFR part 74 Appendix E, ''Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts With Hospitals,'' or 48 CFR part 31, ''Contract Cost Principles and Procedures,'' as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, Federal awarding agencies are authorized, at their option, to waive cost-related and administrative prior written approvals required by this Circular and OMB Circulars A–21 and A–122. Such waivers may include authorizing recipients to do any one or more of the following:

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of the Federal awarding agency. All pre-award costs are incurred at the recipient's risk (i.e., the Federal awarding agency is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify the Federal awarding agency in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

(i) The terms and conditions of award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless the Federal awarding agency provides otherwise in the award or in the agency's regulations, the prior approval requirements described in paragraph (e) are automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) applies.

(f) The Federal awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency. No Federal awarding agency shall permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j), do not require prior approval.

(h) For construction awards, recipients shall request prior written approval promptly from Federal awarding agencies for budget revisions whenever (1), (2) or (3) apply.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in Section § 2543.27.

(i) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(j) When a Federal awarding agency makes an award that provides support for both construction and nonconstruction work, the Federal awarding agency may require the recipient to request prior approval from the Federal awarding agency before making any fund or budget transfers between the two types of work supported.

(k) For both construction and nonconstruction awards, Federal awarding agencies shall require recipients to notify the Federal awarding agency in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than $5,000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.

(l) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless the Federal awarding agency indicates a letter of request suffices.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, Federal awarding agencies shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Federal awarding agency shall inform the recipient in writing of the date when the recipient may expect the decision.

§ 2543.26 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations shall be subject to the audit requirements contained in OMB Circular A–133, ''Audits of Institutions of Higher Education and Other Non-Profit Institutions.''

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act (31 U.S.C. 7501–7) and Federal awarding agency regulations implementing OMB Circular A–128, ''Audits of State and Local Governments.''

(c) Hospitals not covered by the audit provisions of OMB Circular A–133 shall be subject to the audit requirements of the Federal awarding agencies.

(d) Commercial organizations shall be subject to the audit requirements of the Federal awarding agency or the

prime recipient as incorporated into the award document.

§ 2543.27 Allowable costs.

For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, ''Cost Principles for State and Local Governments.'' The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, ''Cost Principles for Non-Profit Organizations.'' The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, ''Cost Principles for Educational Institutions.'' The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, ''Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.'' The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

§ 2543.28 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Federal awarding agency.

PROPERTY STANDARDS

§ 2543.30 Purpose of property standards.

Sections 2543.31 through 2543.37 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. Federal awarding agencies shall require recipients to observe these standards under awards and shall not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of § 2543.31 through § 2543.37.

§ 2543.31 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

§ 2543.32 Real property.

Each Federal awarding agency shall prescribe requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. Unless otherwise provided by statute, such requirements, at a minimum, shall contain the following:

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of the Federal awarding agency.

(b) The recipient shall obtain written approval by the Federal awarding agency for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by the Federal awarding agency.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b), the recipient shall request disposition instructions from the Federal awarding agency or its successor Federal awarding agency. The Federal awarding agency shall observe one or more of the following disposition instructions.

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by the Federal awarding agency and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

§ 2543.33 Federally-owned and exempt property.

(a) Federally-owned property.

(1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the Federal awarding agency. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to the Federal awarding agency for further Federal agency utilization.

(2) If the Federal awarding agency has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless the Federal awarding agency has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710(I)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821, ''Improving Mathematics and Science Education in Support of the National Education Goals''). Appropriate instructions shall be issued to the recipient by the Federal awarding agency.

(b) Exempt property. When statutory authority exists, the Federal awarding agency has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions the Federal awarding agency considers appropriate. Such property is ''exempt property.'' Should a Federal awarding agency not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

§ 2543.34 Equipment.

(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by the Federal awarding agency which funded the original project; then

(2) activities sponsored by other Federal awarding agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the

project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the Federal awarding agency that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Federal awarding agency. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the Federal awarding agency.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following:

(1) Equipment records shall be maintained accurately and shall include the following information.

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Federal awarding agency for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the Federal awarding agency.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of $5,000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the original Federal awarding agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from the Federal awarding agency. The Federal awarding agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall

be reported to the General Services Administration by the Federal awarding agency to determine whether a requirement for the equipment exists in other Federal agencies. The Federal awarding agency shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse the Federal awarding agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall be reimbursed by the Federal awarding agency for such costs incurred in its disposition.

(4) The Federal awarding agency may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

(i) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(ii) The Federal awarding agency shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with grant funds and federally-owned equipment. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.

(iii) When the Federal awarding agency exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

§ 2543.35 Supplies and other expendable property.

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

§ 2543.36 Intangible property.

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The Federal awarding agency(ies) reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.''

(c) Unless waived by the Federal awarding agency, the Federal Government has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award, and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of paragraph § 2543.34 (g).

§ 2543.37 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. Agencies may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

PROCUREMENT STANDARDS

§ 2543.40 Purpose of procurement standards.

Sections § 2543.41 through § 2543.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by the Federal awarding agencies upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

§ 2543.41 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the Federal awarding agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 2543.42 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§ 2543.43 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open

and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 2543.44 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that:

(1) Recipients avoid purchasing unnecessary items,

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government, and

(3) Solicitations for goods and services provide for all of the following:

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of ''brand name or equal'' descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best

interest of the program or project involved. The ''cost-plus-a-percentage-of-cost'' or ''percentage of construction cost'' methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O.s 12549 and 12689, ''Debarment and Suspension.''

(e) Recipients shall, on request, make available for the Federal awarding agency, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in the Federal awarding agency's implementation of this Circular.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently $25,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a ''brand name'' product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

§ 2543.45 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 2543.46 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

(a) Basis for contractor selection;

(b) Justification for lack of competition when competitive bids or offers are not obtained; and

(c) Basis for award cost or price.

§ 2543.47 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 2543.48 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, the Federal awarding agency may accept the bonding policy and requirements of the recipient, provided the Federal awarding agency has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows.

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The ''bid guarantee'' shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A ''performance bond'' is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A ''payment bond'' is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, ''Surety Companies Doing Business with the United States.''

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A to this Circular, as applicable.

REPORTS AND RECORDS

§ 2543.50 Purpose of reports and records.

Sections § 2543.51 through § 2543.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

§ 2543.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in Section § 2543.26.

(b) The Federal awarding agency shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in paragraph § 2543.51(f), performance reports shall not be required more frequently than quarterly or, less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. The Federal awarding agency may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report shall not be required after completion of the project.

(d) When required, performance reports shall generally contain, for each award, brief information on each of the following.

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify the Federal awarding agency of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) Federal awarding agencies may make site visits, as needed.

(h) Federal awarding agencies shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

§ 2543.52 Financial reporting.

(a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients.

(1) SF–269 or SF–269A, Financial Status Report.

(i) Each Federal awarding agency shall require recipients to use the SF–269 or SF–269A to report the status of funds for all nonconstruction projects or programs. A Federal awarding agency may, however, have the option of not requiring the SF–269 or SF–269A when the SF–270, Request for Advance or Reimbursement, or SF–272, Report of Federal Cash Transactions, is determined to provide adequate information to meet its needs, except that a final SF–269 or SF–269A shall be required at the completion of the project when the SF–270 is used only for advances.

(ii) The Federal awarding agency shall prescribe whether the report shall be on a cash or accrual basis. If the Federal awarding agency requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand.

(iii) The Federal awarding agency shall determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(iv) The Federal awarding agency shall require recipients to submit the SF–269 or SF–269A (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semiannual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the Federal awarding agency upon request of the recipient.

(2) SF–272, Report of Federal Cash Transactions.

(i) When funds are advanced to recipients the Federal awarding agency shall require each recipient to submit the SF–272 and, when necessary, its continuation sheet, SF–272a. The Federal awarding agency shall use this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) Federal awarding agencies may require forecasts of Federal cash requirements in the ''Remarks'' section of the report.

(iii) When practical and deemed necessary, Federal awarding agencies may require recipients to report in the ''Remarks'' section the amount of cash advances received in excess of three days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients shall be required to submit not more than the original and two copies of the SF–272 15 calendar days following the end of each quarter. The Federal awarding agencies may require a monthly report from those recipients receiving advances totaling $1 million or more per year.

(v) Federal awarding agencies may waive the requirement for submission of the SF–272 for any one of the following reasons:

(A) When monthly advances do not exceed $25,000 per recipient, provided that such advances are monitored through other forms contained in this section;

(B) If, in the Federal awarding agency's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or,

(C) When the electronic payment mechanisms provide adequate data.

(b) When the Federal awarding agency needs additional information or more frequent reports, the following shall be observed.

(1) When additional information is needed to comply with legislative requirements, Federal awarding agencies shall issue instructions to require recipients to submit such information under the ''Remarks'' section of the reports.

(2) When a Federal awarding agency determines that a recipient's accounting system does not meet the standards in Section §2543.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. The Federal awarding agency, in obtaining this information, shall comply with report clearance requirements of 5 CFR part 1320.

(3) Federal awarding agencies are encouraged to shade out any line item on any report if not necessary.

(4) Federal awarding agencies may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(5) Federal awarding agencies may provide computer or electronic outputs to recipients when such expedites or contributes to the accuracy of reporting.

§2543.53 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. Federal awarding agencies shall not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the Federal awarding agency. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by the Federal awarding agency, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in paragraph (g) of this section.

(c) Copies of original records may be substituted for the original records if authorized by the Federal awarding agency.

(d) The Federal awarding agency shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate record keeping, a Federal awarding agency may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) The Federal awarding agency, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives,

have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, no Federal awarding agency shall place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the Federal awarding agency can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Federal awarding agency.

(g) Indirect cost rate proposals, cost allocations plans, etc. Paragraphs (g)(1) and (g)(2) apply to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) If submitted for negotiation. If the recipient submits to the Federal awarding agency or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) If not submitted for negotiation. If the recipient is not required to submit to the Federal awarding agency or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

TERMINATION AND EVALUATION

§ 2543.60 Purpose of termination and enforcement.

Sections § 2543.61 and § 2543.62 set forth uniform suspension, termination and enforcement procedures.

§ 2543.61 Termination.

(a) Awards may be terminated in whole or in part only if:

(1) By the Federal awarding agency, if a recipient materially fails to comply with the terms and conditions of an award,

(2) By the Federal awarding agency with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated, or

(3) By the recipient upon sending to the Federal awarding agency written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraphs (a) (1) or (2) of this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in paragraph § 2543.71(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 2543.62 Enforcement.

(a) Remedies for noncompliance. If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the Federal awarding agency may, in addition to imposing any of the special conditions

outlined in Section §2543.14, take one or more of the following actions, as appropriate in the circumstances.

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the Federal awarding agency.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) Hearings and appeals. In taking an enforcement action, the awarding agency shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) Effects of suspension and termination. Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable, and

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) Relationship to debarment and suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.s 12549 and 12689 and the Federal awarding agency implementing regulations (see Section §2543.13).

Subpart D—After-the-Award Requirements

§2543.70 Purpose.

Sections §2543.71 through §2543.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§2543.71 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The Federal awarding agency may approve extensions when requested by the recipient.

(b) Unless the Federal awarding agency authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) The Federal awarding agency shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that the Federal awarding agency has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A–129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the Federal awarding agency shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with Sections §2543.31 through §2543.37.

(g) In the event a final audit has not been performed prior to the closeout of an award, the Federal awarding agency shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 2543.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following:

(1) The right of the Federal awarding agency to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in Section § 2543.26.

(4) Property management requirements in Sections § 2543.31 through § 2543.37.

(5) Records retention as required in Section § 2543.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the Federal awarding agency and the recipient, provided the responsibilities of the recipient referred to in paragraph § 2543.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 2543.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Federal awarding agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the recipient,

(3) Taking other action permitted by statute, or

(b) Except as otherwise provided by law, the Federal awarding agency shall charge interest on an overdue debt in accordance with 4 CFR Chapter II, ''Federal Claims Collection Standards.''

Subpart E—Statutory Compliance

§ 2543.80 Contract Provisions.

All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:

§ 2543.81 Equal Employment Opportunity.

All contracts shall contain a provision requiring compliance with E.O. 11246, ''Equal Employment Opportunity,'' as amended by E.O. 11375, ''Amending Executive Order 11246 Relating to Equal Employment Opportunity,'' and as supplemented by regulations at 41 CFR part 60, ''Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.''

§ 2543.82 Copeland "Anti-Kickback" Act.

All contracts and subgrants in excess of $2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, ''Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States''). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

§ 2543.83 Davis-Bacon Act.

When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than $2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) and as supplemented by Department of Labor regulations (29 CFR part 5, ''Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction'').

Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

§ 2543.84 Contract Work Hours and Safety Standards Act.

Where applicable, all contracts awarded by recipients in excess of $2000 for construction contracts and in excess of $2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

§ 2543.85 Rights to Inventions Made Under a Contract or Agreement.

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,'' and any implementing regulations issued by the awarding agency.

§ 2543.86 Clean Air Act and the Federal Water Pollution Control Act.

Contracts and subgrants of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

§ 2543.87 Byrd Anti-Lobbying Amendment.

Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

§ 2543.88 Debarment and Suspension.

No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, ''Debarment and Suspension.'' This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority

other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

PART 2544—SOLICITATION AND ACCEPTANCE OF DONATIONS

Sec.

AUTHORITY: 42 U.S.C. 12501 *et seq.*

SOURCE: 60 FR 28355, May 31, 1995, unless otherwise noted.

§2544.100 What is the purpose of this part?

This part establishes rules to ensure that the solicitation, acceptance, holding, administration, and use of property and services donated to the Corporation:

(a) Will not reflect unfavorably upon the ability of the Corporation or its officers and employees, to carry out their official duties and responsibilities in a fair and objective manner; and

(b) Will not compromise the integrity of the Corporation's programs or its officers and employees involved in such programs.

§2544.105 What is the legal authority for soliciting and accepting donations to the Corporation?

Section 196(a) of the National and Community Service Act of 1990, as amended (42 U.S.C. 12651g(a)).

§2544.110 What definitions apply to terms used in this part?

(a) *Donation* means a transfer of money, property, or services to or for the use of the Corporation by gift, devise, bequest, or other means.

(b) *Solicitation* means a request for a donation.

(c) *Volunteer* means an individual who donates his/her personal service to the Corporation to assist the Corporation in carrying out its duties under the national service laws, but who is not a participant in a program funded or sponsored by the Corporation under the National and Community Service Act of 1990, as amended. Such individual is not subject to provisions of law related to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation and Federal employee benefits, except that—

(1) Volunteers will be considered Federal employees for the purpose of the tort claims provisions of 28 U.S.C. chapter 171;

(2) Volunteers will be considered Federal employees for the purposes of 5 U.S.C. chapter 81, subchapter I, relating to compensation to Federal employees for work injuries; and

(3) Volunteers will be considered special Government employees for the purpose of ethics and public integrity under the provisions of 18 U.S.C. chapter 11, part I, and 5 CFR chapter XVI, subchapter B.

(d) *Inherently governmental function* means any activity that is so intimately related to the public interest as to mandate performance by an officer or employee of the Federal Government, including an activity that requires either the exercise of discretion in applying the authority of the Government or the use of value judgment in making a decision for the Government.

§2544.115 Who may offer a donation?

Anyone, including an individual, group of individuals, organization, corporation, or association may offer a donation to the Corporation.

§ 2544.120 What personal services from a volunteer may be solicited and accepted?

A donation in the form of personal services from a volunteer may be solicited and accepted to assist the Corporation in carrying out its duties. However, volunteers may not perform an inherently governmental function.

§ 2544.125 Who has the authority to solicit and accept or reject a donation?

The Chief Executive Officer (CEO) of the Corporation has the authority to solicit, accept, or reject a donation offered to the Corporation and to make the determinations described in § 2544.130 (c) and (d). The CEO may delegate this authority in writing to other officials of the Corporation.

§ 2544.130 How will the Corporation determine whether to solicit or accept a donation?

(a) The Corporation will solicit and accept a donation only for the purpose of furthering the mission and goals of the Corporation.

(b) In order to be accepted, the donation must be economically advantageous to the Corporation, considering foreseeable expenditures for matters such as storage, transportation, maintenance, and distribution.

(c) An official or employee of the Corporation will not solicit or accept a donation if the solicitation or acceptance would present a real or apparent conflict of interest. An apparent conflict of interest is presented if the solicitation or acceptance would raise a question in the mind of a reasonable person, with knowledge of the relevant facts, about the integrity of the Corporation's programs or operations.

(d) The Corporation will determine whether a conflict of interest exists by considering any business relationship, financial interest, litigation, or other factors that may indicate such a conflict. Donations of property or voluntary services may not be solicited or accepted from a source which:

(1) Is a party to a grant or contract with the Corporation or is seeking to do business with the Corporation;

(2) Has pecuniary interests that may be substantially affected by performance or nonperformance of the Corporation; or

(3) Is an organization a majority of whose members are described in paragraphs (d)(1) and (2) of this section.

(e) Any solicitation or offer of a donation that raises a question or concern of a potential, real, or apparent conflict of interest will be forwarded to the Corporation's Designated Ethics Official for an opinion.

§ 2544.135 How should an offer of a donation be made?

(a) In general, an offer of donation should be made by providing a letter of tender that offers a donation. The letter should be directed to an official authorized to accept donations, describe the property or service offered, and specify any purpose for, or condition on, the use of the donation.

(b) If an offer is made orally, the Corporation will send a letter of acknowledgment to the offeror. If the donor is anonymous, the Corporation will prepare a memorandum to the file acknowledging receipt of a tendered donation and describing the donation including any special terms or conditions.

(c) Only those employees or officials with expressed notice of authority may accept donations on behalf of the Corporation. If an offer is directed to an unauthorized employee or official of the Corporation, that person must immediately forward the offer to an appropriate official for disposition.

§ 2544.140 How will the Corporation accept or reject an offer?

(a) In general, the Corporation will respond to an offer of a donation in writing and include in the response:

(1) An acknowledgment of receipt of the offer;

(2) A brief description of the offer and any purpose or condition that the offeror specified for the use of the donation;

(3) A statement either accepting or rejecting the donation; and

(4) A statement informing the donor that any acceptance of services or property can not be used in any manner, directly or indirectly, that endorses the donor's products or services

or appears to benefit the financial interests or business goals of the donor.

(b) If a purpose or condition for the use of the donation specified by the offeror can not be accommodated, the Corporation may request the offeror to modify the terms of the donation.

§ 2544.145 What will be done with property that is not accepted?

In general, property offered to the Corporation but not accepted will be returned to the offeror. If the offeror is unknown or the donation would spoil if returned, the property will either be disposed of in accordance with Federal Property Management regulations (41 CFR chapter 101) or given to local charities determined by the Corporation.

§ 2544.150 How will accepted donations be recorded and used?

(a) All accepted donations of money and other property will be reported to the Chief Financial Officer (CFO) of the Corporation for recording and appropriate disposition.

(b) All donations of personal services of a volunteer will be reported to the CFO and to the Personnel Division of the Corporation for processing and documentation.

(c) Donations not designated for a particular purpose will be used for an authorized purpose described in § 2544.125.

(d) Property will be used as nearly as possible in accordance with the terms of the donation. If no terms are specified, or the property can no longer be used for its original purpose, the property will be converted to another authorized use or sold in accordance with Federal regulations. The proceeds of the sale will be used for an authorized purpose described in § 2544.125.

PART 2550—REQUIREMENTS AND GENERAL PROVISION FOR STATE COMMISSIONS, ALTERNATIVE ADMINISTRATIVE ENTITIES AND TRANSITIONAL ENTITIES

Sec.

AUTHORITY: 42 U.S.C. 12501 *et seq.*

SOURCE: 58 FR 60981, Nov. 18, 1993, unless otherwise noted.

§ 2550.10 What is the purpose of this part?

(a) The Corporation for National and Community Service (the Corporation) seeks to meet the Nation's pressing human, educational, environmental and public safety needs through service and to reinvigorate the ethic of civic responsibility across the Nation. If the Corporation is to meet these goals, it is critical for each of the States to be actively involved.

(b) The Corporation will distribute nearly $200 million in grants under subtitle C of the Act (hereinafter, ''subtitle C'') to help establish, operate and expand national service programs. At least two-thirds of these funds will go to the States, which will then subgrant to State agencies or local programs. However, in order to be eligible to apply for program funding and/or approved national service positions with an educational award, each State is required to establish a State Commission on National and Community Service to administer the State program grantmaking process and to develop a State plan. The Corporation may, in some instances approve Alternative Administrative Entities (AAEs) or allow a State agency to perform the duties of the State Commission. (For

the purposes of this part, a State agency which has been authorized by the Corporation to perform State Commission duties is called a ''Transitional Entity''.)

(c) The Corporation recognizes that establishing and operating State Commissions involves significant effort and cost. Therefore, grants of between $125,000 and $750,000 will be distributed to the States to cover the Federal share of operating the State Commissions, AAEs, or Transitional Entities. (For the purposes of this part, notwithstanding the definition of ''State'' that appears in the National and Community Service Act of 1990, as amended (the Act), ''State'' means the 50 States, the District of Columbia, and Puerto Rico.) In order to receive any Corporation grant, however, a State must commit to establishing a State Commission or AAE as soon as possible.

(d) The purpose of this part is to provide States with the basic information essential to participate in the subtitle C programs. Of equal importance, this part gives an explanation of the preliminary steps States must take in order to receive money from the Corporation. This part also offers guidance on which of the three State entities States should seek to establish, and it explains the composition requirements, duties, responsibilities, restrictions, and other relevant information regarding State Commissions, AAEs, and approved Transitional Entities.

§ 2550.20 Definitions.

(a) *AAE.* Alternative Administrative Entity.

(b) *Administrative costs.* As used in this part, those costs incurred by a State in the establishing and operating a State entity; the specific administrative costs for which a Corporation administrative grant may be used as defined in the Uniform Administrative Requirements for Grants and Agreements to State and Local Governments.

(c) *Alternative Administrative Entity (AAE).* A State entity approved by the Corporation to perform the duties of a State Commission, including developing a three-year comprehensive national service plan, preparing applications to the Corporation for funding and approved national service positions, and administering service program grants; in general, an AAE must meet the same composition and other requirements as a State Commission, but may receive waivers from the Corporation to accommodate State laws that prohibit inquiring as to the political affiliation of members, to have more than 25 voting members (the maximum for a State Commission), and/or to select members in a manner other than selection by the chief executive officer of the State.

(d) *Approved National Service Position.* A national service program position for which the Corporation has approved the provision of a national service educational award as one of the benefits to be provided for successful completion of a term of service.

(e) *Corporation.* As used in this part, the Corporation for National and Community Service established pursuant to the National and Community Service Trust Act of 1993 (42 U.S.C. 12651).

(f) *Corporation representative.* Each of the individuals employed by the Corporation for National and Community Service to assist the States in carrying out national and community service activities; the Corporation representative must be included as a member of the State Commission or AAE.

(g) *Indian tribe.* (1) An Indian tribe, band, nation, or other organized group or community, including—

(i) Any Native village, as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)), whether organized traditionally or pursuant to the Act of June 18, 1934 (commonly known as the ''Indian Reorganization Act''; 48 Stat. 984, chapter 576; 25 U.S.C. 461 et seq.); and

(ii) Any Regional Corporation or Village Corporation as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1602 (g) or (j)), that is recognized as eligible for the special programs and services provided by the United States under Federal law to Indians because of their status as Indians; and

(2) Any tribal organization controlled, sanctioned, or chartered by an entity described in paragraph (g)(1) of this section.

(h) *Older adult.* An individual 55 years of age or older.

(i) *Service-learning.* A method under which students or participants learn and develop through active participation in thoughtfully organized service that is conducted in and meets the needs of a community and that is coordinated with an elementary school, secondary school, institution of higher education, or community service program, and with the community; service-learning is integrated into and enhances the academic curriculum of the students, or the educational components of the community service program in which the participants are enrolled, and it provides time for the students or participants to reflect on the service experience.

(j) *Service learning programs.* The totality of the service learning programs receiving assistance from the Corporation under subtitle B of the Act, either directly or through a grant-making entity; this includes school-based, community-based, and higher education-based service-learning programs.

(k) *State.* As used in this part, the term *State* refers to each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(l) *State Commission.* A bipartisan or nonpartisan State entity, approved by the Corporation, consisting of 15–25 members (appointed by the chief executive officer of the State), that is responsible for developing a comprehensive national service plan, assembling applications for funding and approved national service positions, and administering national and community service programs in the State.

(m) *State Educational Agency.* The same meaning given to such term in section 1471(23) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(23)).

(n) *State entity.* A State Commission, AAE, or Transitional Entity that has been authorized by the Corporation to perform the duties of a State Commission.

(o) *Transitional Entity.* An existing State agency which has been authorized by the Corporation to perform the duties of a State Commission; the Corporation will not authorize the use of a Transitional Entity unless a State is demonstrably unable to establish a State Commission or AAE.

§ 2550.30 How does a State decide which of the three entities to establish?

(a) Although each State's chief executive officer has the authority to select an administrative option, the Corporation strongly encourages States to establish State Commissions which meet the requirements in this part as quickly as possible. The requirements for State Commissions were established to try to create informed and effective entities.

(b) The Corporation recognizes that some States, for legal or other legitimate reasons, may not be able to meet all of the requirements of the State Commissions. The AAE is essentially the same as a State Commission; however, it may be exempt from some of the State Commission requirements. A State that cannot meet one of the waivable requirements of the State Commission (as explained in § 2550.60), and which can demonstrate this to the Corporation, should seek to establish an AAE.

(c) Over the long term, States that wish to participate in the Corporation's grant programs must have either a State Commission or an AAE approved by the Corporation. Some States, due to legal or other procedural requirements, may be unable to establish one of these two entities in time to participate in fiscal years 1994 or 1995. Therefore, during the 27-month period beginning on September 21, 1993 and ending on December 21, 1995, a State may apply to the Corporation for authorization to use a Transitional Entity.

(d) A State should consider applying to have a Transitional Entity approved only if it can demonstrate that it is impossible, for legal or procedural reasons, to establish a State Commission or AAE in time to participate in the national service programs.

(e) Regardless of which entity a State employs, each State is required to solicit broad-based, local input in an open, inclusive, non-political planning process.

§ 2550.40 How does a State obtain Corporation authorization and approval for the entity it has chosen?

(a) To receive approval of a State Commission or AAE, a State must formally establish an entity that meets the corresponding composition, membership, authority, and duty requirements of this part. (For the AAE, a State must demonstrate why it is impossible or unreasonable to estalbish a State Commission; an approved AAE, however, has the same rights and responsibilities as a State Commission.) Once the entity is established, the State must provide written notice—in a format to be prescribed by the Corporation—to the chief executive officer of the Corporation of the composition, membership, and authorities of the State Commission or AAE and explain how the entity will perform its duties and functions. Further, the State must agree to, first, request approval from the Corporation for any subsequent changes in the composition or duties of a State Commission or AAE the State may wish to make, and, second, to comply with any future changes in Corporation requirements with regard to the composition or duties of a State Commission or AAE. If a State meets the applicable requirements, the Corporation will approve the State Commission or AAE.

(b) If the Corporation rejects a State application for approval of a State Commission or AAE because that application does not meet one or more of the requirements of §§ 2250.50 or 2550.60, it will notify the State of the reasons for rejection and offer assistance to make any necessary changes. The Corporation will reconsider revised applications within 14 working days of resubmission.

(c) To receive approval to use an existing State agency as a Transitional Entity, a State must, first, satisfactorily demonstrate why it is unable to establish a State Commission or AAE, and, second, explain how it will carry out the duties of the State Commission and conduct a broad-based, open and inclusive planning process in a non-political manner. In addition, in order to receive any administrative funds from the Corporation, a State must commit to establish a State Commission or AAE as soon as possible, and prior to the expiration of the 27-month transition period ending on December 21, 1995. Administrative grants will only be given for up to 12-month periods. If a Transitional Entity wishes to receive an additional administrative grant subsequent to the expiration of an initial 12-month administrative grant, that State entity must demonstrate satisfactory progress toward establishment of a State Commission or AAE.

§ 2550.50 What are the composition requirements and other requirements, restrictions or guidelines for State Commissions?

The following provisions apply to both State Commissions and AAEs, except that AAEs may obtain waivers from certain provisions as explained in § 2550.60.

(a) *Size of the State Commission and terms of State Commission members.* The chief executive officer of a State must appoint 15–25 voting members to the State Commission (in addition to any non-voting members he or she may appoint). Voting members of a State Commission must be appointed to renewable three-year terms, except that initially a chief executive officer must appoint a third of the members to one-year terms and another third of the members to two-year terms.

(b) *Required voting members on a State Commission.* A member may represent none, one, or more than one category, but each of the following categories must be represented:

(1) A representative of a community-based agency or organization in the State;

(2) The head of the State education agency or his or her designee;

(3) A representative of local government in the State;

(4) A representative of local labor organizations in the State;

(5) A representative of business;

(6) An individual between the ages of 16 and 25, inclusive, who is a participant or supervisor of a service program for school-age youth, or of a campus-based or national service program;

(7) A representative of a national service program;

(8) An individual with expertise in the educational, training, and development needs of youth, particularly disadvantaged youth; and

(9) An individual with experience in promoting the involvement of older adults (age 55 and older) in service and volunteerism.

(c) *Appointment of other voting members of a State Commission.* Any remaining voting members of a State Commission are appointed at the discretion of the chief executive officer of the State; however, although this list should not be construed as exhaustive, the Corporation suggests the following types of individuals:

(1) Educators, including representatives from institutions of higher education and local education agencies;

(2) Experts in the delivery of human, educational, environmental, or public safety services to communities and persons;

(3) Representatives of Indian tribes;

(4) Out-of-school or at-risk youth; and

(5) Representatives of programs that are administered or receive assistance under the Domestic Volunteer Service Act of 1973, as amended (DVSA) (42 U.S.C. 4950 et seq.).

(d) *Appointment of ex officio, non-voting members of a State Commission.* The chief executive officer of a State may appoint as ex officio, non-voting members of the State Commission officers or employees of State agencies operating community service, youth service, education, social service, senior service, or job training programs.

(e) *Other composition requirements.* To the extent possible, the chief executive officer of a State shall ensure that the membership of the State Commission is balanced with respect to race, ethnicity, age, gender, and disability characteristics. Not more than 50% plus one of the members of a State Commission may be from the same political party. In addition, the number of voting members of a State Commission who are officers or employees of the State may not exceed 25% of the total membership of that State Commission.

(f) *Selection of Chairperson.* The chairperson is elected by the voting members of a State Commission. To be eligible to serve as chairperson, an individual must be an appointed, voting member of a State Commission.

(g) *Vacancies.* If a vacancy occurs on a State Commission, a new member must be appointed by the chief executive officer of the State to serve for the remainder of the term for which the predecessor of such member was appointed. The vacancy will not affect the power of the remaining members to execute the duties of the Commission.

(h) *Compensation of State Commission members.* A member of a State Commission may not receive compensation for his or her services, but may be reimbursed (at the discretion of the State) for travel and daily expenses in the same manner as employees intermittently serving the State.

(i) *The role of the Corporation representative.* The Corporation will designate one of its employees to serve as a representative to each State or group of States. This individual must be included as an ex officio member on the State Commission, and may be designated as a voting member by the chief executive officer of a State. However, because the Corporation wishes to encourage State autonomy in the design and development of the State plan and in State national service programs, States are discouraged from allowing the Corporation representative to vote. In general, the Corporation representative will be responsible for assisting States in carrying out national service activities.

§ 2550.60 From which of the State Commission requirements is an Alternative Administrative Entity exempt?

(a) An AAE is not automatically exempt from any of the requirements that govern State Commissions. However, there are three specific State Commission requirements which the Corporation may waive if a State can demonstrate that one or more of them is impossible or unreasonable to meet. If the Corporation waives a State Commission requirement for a State entity, that State entity is, de facto, an AAE. The three criteria which may be waived for an AAE are as follows:

(1) *The requirement that a State's chief executive officer appoint the members of a State Commission.* If a State can offer a

compelling reason why some or all of the State Commission members should be appointed by the State legislature or by some other appropriate means, the Corporation may grant a waiver.

(2) *The requirement that a State Commission have 15–25 members.* If a State compellingly demonstrates why its commission should have a larger number of members, the Corporation may grant a waiver.

(3) *The requirement that not more than 50% plus one of the State Commission's voting members be from the same political party.* This requirement was established to prevent State Commissions from being politically motivated or controlled; however, in some States it is illegal to require prospective members to provide information about political party affiliation. For this or another compelling reason, the Corporation may grant a waiver.

(b) Again, any time the Corporation grants one or more of these waivers for a State entity, that entity becomes an AAE; in all other respects an AAE is the same as a State Commission, having the same requirements, rights, duties and responsibilities.

§ 2550.70 What are the composition or other requirements for Transitional Entities?

Because a Transitional Entity is by definition contained within a State agency, there are no membership or composition requirements. If a State takes the necessary steps to obtain approval for a Transitional Entity (listed in § 2550.40(c)), it meets the requirements of a Transitional Entity.

§ 2250.80 What are the duties of the State entities?

The duties of each of the three eligible State entities—States Commissions, AAEs and Transitional Entities—are precisely the same. The duties listed in this section apply to all three, and they are jointly referred to as ''State entities.'' Functions described in paragraphs (a) through (d) of this section require policymaking and may not be delegated to another State agency or nonprofit organization. Functions described in paragraphs (e) through (j) of this section are non-policymaking and may be delegated to another State agency or nonprofit organization. The duties are as follows:

(a) *Development of a three-year comprehensive national and community service plan and establishment of State priorities.* The State entity must develop and annually update a Statewide plan for national service that is consistent with the Corporation's broad goals of meeting human, educational, environmental and public safety needs and that meets the following minimum requirements:

(1) The plan must be developed through an open and public process (such as through regional forums or hearings) that provides for maximum participation and input from national service programs within the State, and from other interested members of the public.

(2) The outreach process must, to the maximum extent practicable, include input from representatives of established State service programs, representatives of diverse, broad-based community organizations that serve underserved populations, and other interested individuals, including young people; the State entity should do so by creating State networks and registries or by utilizing existing ones.

(3) The plan may contain such other information as the State Commission considers appropriate and must contain such other information as the Corporation may require.

(b) *Pre-selection of subtitle C programs and preparation of application to the Corporation.* Each State must:

(1) Administer a competitive process to select national service programs to be included in any application to the Corporation for funding; and

(2) Prepare an application to the Corporation to receive funding and/or educational awards for the programs selected pursuant to paragraph (b)(1) of this section.

(c) *Preparation of Service Learning applications.* (1) The State entity is required to assist the State education agency in preparing the application for subtitle B school-based service learning programs.

(2) The State entity may apply to the Corporation to receive funding for community-based subtitle programs

after coordination with the State Educational Agency.

(d) *Administration of the grants program.* After subtitle C and community-based subtitle B funds are awarded, States entities will be responsible for administering the grants and overseeing and monitoring the performance and progress of funded programs.

(e) *Evaluation and monitoring.* State entities, in concert with the Corporation, shall be responsible for implementing comprehensive, non-duplicative evaluation and monitoring systems.

(f) *Technical assistance.* The State entity will be responsible for providing technical assistance to local nonprofit organizations and other entities in planning programs, applying for funds, and in implementing and operating high quality programs. States should encourage proposals from underserved communities.

(g) *Program development assistance and training.* The State entity must assist in the development of subtitle C programs; such development might include staff training, curriculum materials, and other relevant materials and activities. A description of such proposed assistance must be included in the State comprehensive plan referred to in paragraph (a) of this section. A State may apply for additional subtitle C programs training and technical assistance funds to perform these functions. The Corporation will issue notices of availability of funds with respect to training and technical assistance.

(h) *Recruitment and placement.* The State entity, as well as the Corporation, will develop mechanisms for recruitment and placement of people interested in participating in national service programs.

(i) *Benefits.* The State entity shall assist in the provision of health and child care benefits to subtitle C program participants, as will be specified in the regulations implementing the subtitle C programs.

(j) *Activity ineligible for assistance.* A State Commission or AAE may not directly operate or run any national service program receiving financial assistance, in any form, from the Corporation.

(k) *Make recommendations to the Corporation* with respect to priorities within the State for programs receiving assistance under DVSA.

(l) *Coordination.* (1) Coordination with other State agencies.—A State entity must coordinate its activities with the activities of other State agencies that administer Federal financial assistance programs under the Community Services Block Grant Act (42 U.S.C. 9901 et seq.) or other appropriate Federal financial assistance programs.

(2) Coordination with volunteer service programs.—In general, the State entity shall coordinate its functions (including recruitment, public awareness, and training activities) with such functions of any division of ACTION, or the Corporation, that carries out volunteer service programs in the State. Specifically, the State entity may enter into an agreement with a division of ACTION or the Corporation to carry out its functions jointly, to perform its functions itself, or to assign responsibility for its functions to ACTION or the Corporation.

(3) In carrying out the activities under paragraphs (l) (1) and (2) of this section, the parties involved must exchange information about the programs carried out in the State by the State entity, a division of ACTION or the Corporation, as well as information about opportunities to coordinate activities.

§ 2550.90 Are there any restrictions on the activities of the members of State Commissions or Alternative Administrative Entities?

To avoid a conflict of interest (or the appearance of a conflict of interest) regarding the provision of assistance or approved national service positions, members of a State Commission or AAE must adhere to the following provisions:

(a) *General restriction.* Members of State Commissions and AAEs are restricted in several ways from the grant approval and administration process for any grant application submitted by an organization for which they are currently, or were within one year of the submission of the application, officers,

directors, trustees, full-time volunteers or employees. The restrictions for such individuals are as follows:

(1) They cannot assist the applying organization in preparing the grant application;

(2) They must recuse themselves from the discussions or decisions regarding the grant application and any other grant applications submitted to the Commission or AAE under the same program (e.g., subtitle B programs or subtitle C programs); and

(3) They cannot participate in the oversight, evaluation, continuation, suspension or termination of the grant award.

(b) *Exception to achieve a quorum.* If this general restriction creates a situation in which a Commission or AAE does not have enough eligible voting members to achieve a quorum, the Commission or AAE may involve some normally-excluded members subject to the following conditions:

(1) A Commission or AAE may randomly and in a non-discretionary manner select the number of refused members necessary to achieve a quorum;

(2) Notwithstanding paragraph (b)(1) of this section, no Commission or AAE member may, under any circumstances, participate in any discussions or decisions regarding a grant application submitted by an organization with which he or she is or was affiliated according to the definitions in paragraph (a) of this section; and

(3) If recused members are included so as to achieve quorum, the State Commission or AAE must document the event and report to the Corporation within 30 days of the vote.

(c) *Rule of construction.* Paragraph (a) of this section shall not be construed to limit the authority of any voting member of the State Commission or AAE to participate in—

(1) Discussion of, and hearings and forums on, the general duties, policies and operations of the Commission or AAE, or general program administration; or

(2) Similar general matters relating to the Commission or AAE.

§ 2550.100 Do State entities or their members incur any risk of liability?

(a) *State liability.* Except as provided in paragraph (b) of this section, a State must agree to assume liability with respect to any claim arising out of or resulting from any act or omission by a member of the State Commission or AAE, within the scope of the service of that member.

(b) *Individual liability.* A member of the State Commission or AAE shall have no personal liability with respect to any claim arising out of or resulting from any act or omission by that member, within the scope of the service of that member. This does not, however, limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other act or omission outside the scope of the service of that member. Similarly, this part does not limit or alter in any way any other immunities that are available under applicable law for State officials and employees not described in this section; nor does this part affect any other right or remedy against the State or any person other than a member of a State Commission or AAE.

§ 2550.110 What money will be available from the Corporation to assist in establishing and operating a State Commission, Alternative Administrative Entity, or Transitional Entity?

(a) *Range of grants.* The Corporation may make administrative grants to States of between $125,000 and $750,000 (inclusive) for the purpose of establishing or operating a State Commission or AAE; these grants will be available to States which have Corporation-approved Transitional Entities only if those States commit to establishing a Corporation-approved State Commission or AAE prior to the expiration of the transitional period.

(b) *Limitation on Federal share.* Notywithstanding the amounts specified in this section, the amount of a grant that may be provided to a State under this subsection, together with other Federal funds available to establish or operate the State Commission or AAE, may not exceed 85 percent of

the total cost to establish or operate the State Commission or AAE for the first year for which the State Commission or AAE receives an administrative grant under this section.[1] In subsequent years, the Corporation will establish larger matching requirements for States so that by the fifth and subsequent years of assistance, the Federal share does not exceed 50 percent.

[1] See OMB Circulars A–102 and A–122. Copies of the circulars may be obtained from the Office of Administration, EOP Publications, 725 17th Street, NW., Room 2200, New EOB, Washington, DC 20503.

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

Table of CFR Titles and Chapters

(Revised as of September 30, 1996)

Title 1—General Provisions

Title 2—[Reserved]

Title 3—The President

Title 4—Accounts

Title 5—Administrative Personnel

Title 5—Administrative Personnel—Continued

Title 6—[Reserved]

Title 7—Agriculture

Title 7—Agriculture—Continued

Title 8—Aliens and Nationality

Chap.

I Immigration and Naturalization Service, Department of Justice (Parts 1—499)

Title 9—Animals and Animal Products

I Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1—199)

II Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs), Department of Agriculture (Parts 200—299)

III Food Safety and Inspection Service, Meat and Poultry Inspection, Department of Agriculture (Parts 300—399)

Title 10—Energy

I Nuclear Regulatory Commission (Parts 0—199)

II Department of Energy (Parts 200—699)

III Department of Energy (Parts 700—999)

X Department of Energy (General Provisions) (Parts 1000—1099)

XI United States Enrichment Corporation (Parts 1100—1199)

XV Office of the Federal Inspector for the Alaska Natural Gas Transportation System (Parts 1500—1599)

XVII Defense Nuclear Facilities Safety Board (Parts 1700—1799)

Title 11—Federal Elections

I Federal Election Commission (Parts 1—9099)

Title 12—Banks and Banking

I Comptroller of the Currency, Department of the Treasury (Parts 1—199)

II Federal Reserve System (Parts 200—299)

III Federal Deposit Insurance Corporation (Parts 300—399)

IV Export-Import Bank of the United States (Parts 400—499)

V Office of Thrift Supervision, Department of the Treasury (Parts 500—599)

VI Farm Credit Administration (Parts 600—699)

VII National Credit Union Administration (Parts 700—799)

VIII Federal Financing Bank (Parts 800—899)

IX Federal Housing Finance Board (Parts 900—999)

XI Federal Financial Institutions Examination Council (Parts 1100—1199)

XIV Farm Credit System Insurance Corporation (Parts 1400—1499)

XV Thrift Depositor Protection Oversight Board (Parts 1500—1599)

XVII Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development (Parts 1700-1799)

XVIII Community Development Financial Institutions Fund, Department of the Treasury (Parts 1800—1899)

Title 13—Business Credit and Assistance

Chap.

Title 14—Aeronautics and Space

Title 15—Commerce and Foreign Trade

Title 16—Commercial Practices

Title 17—Commodity and Securities Exchanges

Chap.

I Commodity Futures Trading Commission (Parts 1—199)

II Securities and Exchange Commission (Parts 200—399)

IV Department of the Treasury (Parts 400—499)

Title 18—Conservation of Power and Water Resources

I Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)

III Delaware River Basin Commission (Parts 400—499)

VI Water Resources Council (Parts 700—799)

VIII Susquehanna River Basin Commission (Parts 800—899)

XIII Tennessee Valley Authority (Parts 1300—1399)

Title 19—Customs Duties

I United States Customs Service, Department of the Treasury (Parts 1—199)

II United States International Trade Commission (Parts 200—299)

III International Trade Administration, Department of Commerce (Parts 300—399)

Title 20—Employees' Benefits

I Office of Workers' Compensation Programs, Department of Labor (Parts 1—199)

II Railroad Retirement Board (Parts 200—399)

III Social Security Administration (Parts 400—499)

IV Employees' Compensation Appeals Board, Department of Labor (Parts 500—599)

V Employment and Training Administration, Department of Labor (Parts 600—699)

VI Employment Standards Administration, Department of Labor (Parts 700—799)

VII Benefits Review Board, Department of Labor (Parts 800—899)

VIII Joint Board for the Enrollment of Actuaries (Parts 900—999)

IX Office of the Assistant Secretary for Veterans' Employment and Training, Department of Labor (Parts 1000—1099)

Title 21—Food and Drugs

I Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)

II Drug Enforcement Administration, Department of Justice (Parts 1300—1399)

III Office of National Drug Control Policy (Parts 1400—1499)

Title 22—Foreign Relations

I Department of State (Parts 1—199)

Title 22—Foreign Relations—Continued

Chap.

II Agency for International Development, International Development Cooperation Agency (Parts 200—299)

III Peace Corps (Parts 300—399)

IV International Joint Commission, United States and Canada (Parts 400—499)

V United States Information Agency (Parts 500—599)

VI United States Arms Control and Disarmament Agency (Parts 600—699)

VII Overseas Private Investment Corporation, International Development Cooperation Agency (Parts 700—799)

IX Foreign Service Grievance Board Regulations (Parts 900—999)

X Inter-American Foundation (Parts 1000—1099)

XI International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100—1199)

XII United States International Development Cooperation Agency (Parts 1200—1299)

XIII Board for International Broadcasting (Parts 1300—1399)

XIV Foreign Service Labor Relations Board; Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel (Parts 1400—1499)

XV African Development Foundation (Parts 1500—1599)

XVI Japan-United States Friendship Commission (Parts 1600—1699)

XVII United States Institute of Peace (Parts 1700—1799)

Title 23—Highways

I Federal Highway Administration, Department of Transportation (Parts 1—999)

II National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200—1299)

III National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

Title 24—Housing and Urban Development

SUBTITLE A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)

SUBTITLE B—Regulations Relating to Housing and Urban Development

I Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)

II Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

III Government National Mortgage Association, Department of Housing and Urban Development (Parts 300—399)

V Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

Title 24—Housing and Urban Development—Continued

Chap.

VI Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600—699) [Reserved]

VII Office of the Secretary, Department of Housing and Urban Development (Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700—799)

VIII Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Section 202 Direct Loan Program) (Parts 800—899)

IX Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—999)

X Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Interstate Land Sales Registration Program) (Parts 1700—1799)

XII Office of Inspector General, Department of Housing and Urban Development (Parts 2000—2099)

XX Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3699)

XXV Neighborhood Reinvestment Corporation (Parts 4100—4199)

Title 25—Indians

I Bureau of Indian Affairs, Department of the Interior (Parts 1—299)

II Indian Arts and Crafts Board, Department of the Interior (Parts 300—399)

III National Indian Gaming Commission, Department of the Interior (Parts 500—599)

IV Office of Navajo and Hopi Indian Relocation (Parts 700—799)

V Bureau of Indian Affairs, Department of the Interior, and Indian Health Service, Department of Health and Human Services (Part 900)

VI Office of the Assistant Secretary-Indian Affairs, Department of the Interior (Part 1001)

Title 26—Internal Revenue

I Internal Revenue Service, Department of the Treasury (Parts 1—799)

Title 27—Alcohol, Tobacco Products and Firearms

I Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1—299)

Title 28—Judicial Administration

I Department of Justice (Parts 0—199)

III Federal Prison Industries, Inc., Department of Justice (Parts 300—399)

Title 28—Judicial Administration—Continued

Title 29—Labor

Title 30—Mineral Resources

Title 31—Money and Finance: Treasury

Title 31—Money and Finance: Treasury—Continued

Chap.

II Fiscal Service, Department of the Treasury (Parts 200—399)

IV Secret Service, Department of the Treasury (Parts 400—499)

V Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)

VI Bureau of Engraving and Printing, Department of the Treasury (Parts 600—699)

VII Federal Law Enforcement Training Center, Department of the Treasury (Parts 700—799)

VIII Office of International Investment, Department of the Treasury (Parts 800—899)

Title 32—National Defense

SUBTITLE A—Department of Defense

I Office of the Secretary of Defense (Parts 1—399)

V Department of the Army (Parts 400—699)

VI Department of the Navy (Parts 700—799)

VII Department of the Air Force (Parts 800—1099)

SUBTITLE B—Other Regulations Relating to National Defense

XII Defense Logistics Agency (Parts 1200—1299)

XVI Selective Service System (Parts 1600—1699)

XIX Central Intelligence Agency (Parts 1900—1999)

XX Information Security Oversight Office, National Archives and Records Administration (Parts 2000—2099)

XXI National Security Council (Parts 2100—2199)

XXIV Office of Science and Technology Policy (Parts 2400—2499)

XXVII Office for Micronesian Status Negotiations (Parts 2700—2799)

XXVIII Office of the Vice President of the United States (Parts 2800—2899)

XXIX Presidential Commission on the Assignment of Women in the Armed Forces (Part 2900)

Title 33—Navigation and Navigable Waters

I Coast Guard, Department of Transportation (Parts 1—199)

II Corps of Engineers, Department of the Army (Parts 200—399)

IV Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400—499)

Title 34—Education

SUBTITLE A—Office of the Secretary, Department of Education (Parts 1—99)

SUBTITLE B—Regulations of the Offices of the Department of Education

I Office for Civil Rights, Department of Education (Parts 100—199)

II Office of Elementary and Secondary Education, Department of Education (Parts 200—299)

Title 34—Education—Continued

Chap.

Title 35—Panama Canal

Title 36—Parks, Forests, and Public Property

Title 37—Patents, Trademarks, and Copyrights

Title 38—Pensions, Bonuses, and Veterans' Relief

Title 39—Postal Service

Chap.

Title 40—Protection of Environment

Title 41—Public Contracts and Property Management

Title 42—Public Health

Title 43—Public Lands: Interior

Chap.

SUBTITLE A—Office of the Secretary of the Interior (Parts 1—199)

SUBTITLE B—Regulations Relating to Public Lands

I Bureau of Reclamation, Department of the Interior (Parts 200—499)

II Bureau of Land Management, Department of the Interior (Parts 1000—9999)

III Utah Reclamation Mitigation and Conservation Commission (Parts 10000—10005)

Title 44—Emergency Management and Assistance

I Federal Emergency Management Agency (Parts 0—399)

IV Department of Commerce and Department of Transportation (Parts 400—499)

Title 45—Public Welfare

SUBTITLE A—Department of Health and Human Services, General Administration (Parts 1—199)

SUBTITLE B—Regulations Relating to Public Welfare

II Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services (Parts 200—299)

III Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services (Parts 300—399)

IV Office of Refugee Resettlement, Administration for Children and Families Department of Health and Human Services (Parts 400—499)

V Foreign Claims Settlement Commission of the United States, Department of Justice (Parts 500—599)

VI National Science Foundation (Parts 600—699)

VII Commission on Civil Rights (Parts 700—799)

VIII Office of Personnel Management (Parts 800—899)

X Office of Community Services, Administration for Children and Families, Department of Health and Human Services (Parts 1000—1099)

XI National Foundation on the Arts and the Humanities (Parts 1100—1199)

XII ACTION (Parts 1200—1299)

XIII Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)

XVI Legal Services Corporation (Parts 1600—1699)

XVII National Commission on Libraries and Information Science (Parts 1700—1799)

XVIII Harry S. Truman Scholarship Foundation (Parts 1800—1899)

XXI Commission on Fine Arts (Parts 2100—2199)

XXII Christopher Columbus Quincentenary Jubilee Commission (Parts 2200—2299)

XXIII Arctic Research Commission (Part 2301)

Title 45—Public Welfare—Continued

Chap.

XXIV James Madison Memorial Fellowship Foundation (Parts 2400—2499)

XXV Corporation for National and Community Service (Parts 2500—2599)

Title 46—Shipping

I Coast Guard, Department of Transportation (Parts 1—199)

II Maritime Administration, Department of Transportation (Parts 200—399)

III Saint Lawrence Seaway Development Corporation (Great Lakes Pilotage), Department of Transportation (Parts 400—499)

IV Federal Maritime Commission (Parts 500—599)

Title 47—Telecommunication

I Federal Communications Commission (Parts 0—199)

II Office of Science and Technology Policy and National Security Council (Parts 200—299)

III National Telecommunications and Information Administration, Department of Commerce (Parts 300—399)

Title 48—Federal Acquisition Regulations System

1 Federal Acquisition Regulation (Parts 1—99)

2 Department of Defense (Parts 200—299)

3 Department of Health and Human Services (Parts 300—399)

4 Department of Agriculture (Parts 400—499)

5 General Services Administration (Parts 500—599)

6 Department of State (Parts 600—699)

7 Agency for International Development (Parts 700—799)

8 Department of Veterans Affairs (Parts 800—899)

9 Department of Energy (Parts 900—999)

10 Department of the Treasury (Parts 1000—1099)

12 Department of Transportation (Parts 1200—1299)

13 Department of Commerce (Parts 1300—1399)

14 Department of the Interior (Parts 1400—1499)

15 Environmental Protection Agency (Parts 1500—1599)

16 Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation (Parts 1600—1699)

17 Office of Personnel Management (Parts 1700—1799)

18 National Aeronautics and Space Administration (Parts 1800—1899)

19 United States Information Agency (Parts 1900—1999)

20 Nuclear Regulatory Commission (Parts 2000—2099)

21 Office of Personnel Management, Federal Employees Group Life Insurance Federal Acquisition Regulation (Parts 2100—2199)

23 Social Security Administration (Parts 2300—2399)

Title 48—Federal Acquisition Regulations System—Continued

Chap.

Title 49—Transportation

Title 50—Wildlife and Fisheries

CFR Index and Finding Aids

Alphabetical List of Agencies Appearing in the CFR

(Revised as of September 30, 1996)

Agency	CFR Title, Subtitle or Chapter
ACTION	45, XII
Administrative Committee of the Federal Register	1, I
Advanced Research Projects Agency	32, I
Advisory Commission on Intergovernmental Relations	5, VII
Advisory Committee on Federal Pay	5, IV
Advisory Council on Historic Preservation	36, VIII
African Development Foundation	22, XV
Federal Acquisition Regulation	48, 57
Agency for International Development	22, II
Federal Acquisition Regulation	48, 7
Agricultural Marketing Service	7, I, IX, X, XI
Agricultural Research Service	7, V
Agriculture Department	
Agricultural Marketing Service	7, I, IX, X, XI
Agricultural Research Service	7, V
Animal and Plant Health Inspection Service	7, III; 9, I
Commodity Credit Corporation	7, XIV
Cooperative State Research, Education, and Extension Service	7, XXXIV
Economic Analysis Staff	7, XXXIX
Economic Research Service	7, XXXVII
Economics Management Staff	7, XL
Energy, Office of	7, XXIX
Environmental Quality, Office of	7, XXXI
Farm Service Agency	7, VII, XVIII
Federal Acquisition Regulation	48, 4
Federal Crop Insurance Corporation	7, IV
Finance and Management, Office of	7, XXX
Food and Consumer Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Forest Service	36, II
Grain Inspection, Packers and Stockyards Administration	7, VIII; 9, II
Information Resources Management, Office of	7, XXVII
Inspector General, Office of	7, XXVI
National Agricultural Library	7, XLI
National Agricultural Statistics Service	7, XXXVI
Natural Resources Conservation Service	7, VI
Operations, Office of	7, XXVIII
Rural Business-Cooperative Service	7, XVIII, XLII
Rural Development Administration	7, XLII
Rural Housing Service	7, XVIII
Rural Telephone Bank	7, XVI
Rural Utilities Service	7, XVII, XVIII, XLII
Secretary of Agriculture, Office of	7, Subtitle A
Transportation, Office of	7, XXXIII
World Agricultural Outlook Board	7, XXXVIII
Air Force Department	32, VII
Federal Acquisition Regulation Supplement	48, 53
Alaska Natural Gas Transportation System, Office of the Federal Inspector	10, XV
Alcohol, Tobacco and Firearms, Bureau of	27, I
AMTRAK	49, VII

Agency	CFR Title, Subtitle or Chapter
National Highway Traffic Safety Administration	23, II, III; 49, V
Research and Special Programs Administration	49, I
Saint Lawrence Seaway Development Corporation	33, IV; 46, III
Secretary of Transportation, Office of	14, II; 49, Subtitle A
Surface Transportation Board	49, X
Transportation, Office of	7, XXXIII
Travel Allowances	41, 301
Treasury Department	5, XXI; 17, IV
Alcohol, Tobacco and Firearms, Bureau of	27, I
Community Development Financial Institutions Fund	12, XVIII
Comptroller of the Currency	12, I
Customs Service, United States	19, I
Engraving and Printing, Bureau of	31, VI
Federal Acquisition Regulation	48, 10
Federal Law Enforcement Training Center	31, VII
Fiscal Service	31, II
Foreign Assets Control, Office of	31, V
Internal Revenue Service	26, I
International Investment, Office of	31, VIII
Monetary Offices	31, I
Secret Service	31, IV
Secretary of the Treasury, Office of	31, Subtitle A
Thrift Supervision, Office of	12, V
Truman, Harry S. Scholarship Foundation	45, XVIII
United States and Canada, International Joint Commission	22, IV
United States and Mexico, International Boundary and Water Commission, United States Section	22, XI
United States Enrichment Corporation	10, XI
Utah Reclamation Mitigation and Conservation Commission	43, III
Veterans Affairs Department	38, I
Federal Acquisition Regulation	48, 8
Veterans' Employment and Training, Office of the Assistant Secretary for	41, 61; 20, IX
Vice President of the United States, Office of	32, XXVIII
Vocational and Adult Education, Office of	34, IV
Wage and Hour Division	29, V
Water Resources Council	18, VI
Workers' Compensation Programs, Office of	20, I
World Agricultural Outlook Board	7, XXXVIII

Redesignation Table

At 51 FR 23056, June 25, 1986, regulations formerly appearing in 36 CFR chapter X, were transferred to 45 CFR chapter XXI.

For the convenience of the user, the following table shows the relationship of the former part numbers under 36 CFR chapter X and the new part numbers in 45 CFR chapter XXI.

Old Part	New Part
1000	2105
1002	2106

List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the FEDERAL REGISTER since January 1, 1986, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters and parts as well as sections for revisions.

For the period before January 1, 1986, see the ''List of CFR Sections Affected, 1949–1963, 1964–1972, and 1973–1985'' published in seven separate volumes.

1986

45 CFR

51 FR Page

Chapter XVI

1600 Authority citation revised 24827
1600.1 Amended 24827
1611 Appendix A revised 24151
1612 Revised 27548
Request for comments 40422
1614.1 (d) amended; (e) added 21559
1625 Revised 15899
1630 Added 29081
1631 Added 24827

Chapter XVII

1706 Added 4578, 4579
1706.103 Corrected 7543
1706.150 (c) corrected 7543
1706.170 (c) revised 4578

Chapter XX

Chapter XX Chapter established 3174, 7220, 8300
2000 Added 7220
2001 Added; interim 8300
Revised 36786
2002 Added; interim 3174
Confirmed 28384
2010 Added 47164

Chapter XXI

2104 Added 22895, 22896
2104.170 (c) revised 22895
2105 Redesignated from 36 Part 1000 and nomenclature change 23056

45 CFR—Continued

51 FR Page

Chapter XXI —Continued

2106 Redesignated from 36 Part 1002 and nomenclature change 23056

1987

45 CFR

52 FR Page

Chapter XII

1204 Authority citation revised 20714
1204.1 Revised 20714
1204.2 Revised 20714
1207 Authority citation revised 32133
1207.3–7 Added; eff. 10–13–87 32133
1208 Authority citation revised 32134
1208.3–8 Added; eff. 10–13–87 32134

Chapter XIII

1340 Authority citation revised 3994
1340.1 (c) revised 3994
1340.2 (d) revised 3994
1340.3 (b) revised 3995
1340.13 (a) revised; (c) added 3995
1340.14 (i)(1) and (2) introductory text republished; (i)(2)(viii) amended; (i)(3) and (4) redesignated as (i)(4) and (5); new (i)(3) added 3995
1340.15 OMB number 3995
1385 Heading and authority citation revised 44845
1385.1 Revised 44845

45 CFR—Continued

52 FR Page

Chapter XIII —Continued
1385.3 Introductory text republished; section amended 44845
1385.4 Revised 44845
1385.5 Added 44846
1385.6 Revised 44846
1385.7 Introductory text revised 44846
1385.9 (a) introductory text revised 44846
1386 Authority citation revised 44846
1386.20 (d) and (e) added 44846
1386.21 (a) revised 44846
1386.22 Removed 44846
1386.23 Revised 44846
1386.24 Revised 44847
1386.30 (a), (b), (e) (2) and (3) revised; OMB number 44847
1386.32 Revised; OMB number 44847
1386.33 (a) revised; OMB number 44847
1386.34 Removed 44847
1386.35 (b)(1) revised 44847
1386.81 (a) revised 44847
1386.111 (c) introductory text republished; (c)(1) revised 44847
1387 Heading revised 44847
1388 Revised 44847

Chapter XVI
1611 Appendix A revised 18914
1612 Revised 28436
1612.5 (h)(1) corrected; first (h)(2) correctly removed 28777
1612.6 (b) corrected 28777

Chapter XX
2001 Authority citation revised 2384
2001.20—2001.29 (Subpart B) Revised 2384
2001.38 Added; interim 22647
2001.39 Added; interim 22648
2001 Appendix A revised 2386
Appendix D added 2387
Appendix E added 22650
2002 Authority citation revised 28705
2002.21 (a) introductory text, (1) and (2) amended 28705
2002.22 (b) amended 28705
2005 Added; interim 5543
2010 Revised 30582

Chapter XXII
Chapter XXII Chapter established; interim 10870

45 CFR—Continued

52 FR Page

Chapter XXII —Continued
2201 Added; interim (effective date pending in part) 10870

1988

45 CFR

53 FR Page

Chapter XII
1229 Added; eff. 10–1–88 ..... 19202, 19204
Nomenclature change; eff. 10–1–88 19203
1234 Added 8084, 8087

Chapter XIII
1301 Authority citation revised 5979
1301.31 Revised 5979
1321 Revised 33766
1326 Redesignated from 1328 and revised 33774
1328 Redesignated as 1326 and revised 33774
Added 33777
1336 Authority citation revised 23968
1336.30 (c) added; interim 23968
(c) interim addition eff. 7–25–88 28223
1336.60—1336.77 (Subpart F) Added; interim 23968
Interim addition eff. 7–25–88 28223
1356.40 (b) introductory text, (1), (3), and (4) revised; (c) removed; (d), (e), (f), and (g) redesignated as (c), (d), (e), and (f) 50220
1356.41 Added 50220
1356.60 (c)(4) removed; (c)(5) redesignated as (c)(4) 50221

Chapter XVI
1602.1 Amended 6153
1602.2 Revised 6153
1602.4 Amended 6153
Corrected 9726
1602.5 (a) amended 6153
1602.6 Removed 6153
1602.7 (a) amended 6153
1602.9 (a)(6) revised 6153
1602.10 Amended 6154
1602.13 (b), (c) and (d), (e)(1) introductory text and (i) through (iii) and (f) through (h) revised; (e) introductory text republished; (e)(1)(iv), (6) and (7) and (i) through (k) added 6154
(e)(7) and (h)(1) corrected 9726

45 CFR—Continued

53 FR Page

Chapter XVI —Continued
1607 Authority citation revised 30679
1607.6 Revised 30679
Technical correction 32322
1611 Appendix A revised 12018
Chapter XVIII
1801 Revised 23239
Chapter XX
2001.34 (a) amended 27519
2015 Added 8084, 8087
Chapter XXII
2201 Authority citation revised; nomenclature change 3320
2201.4 Added; interim 3320
2201.11 (Subpart B) Redesignated as 2201.21 (Subpart C); new 2201.11—2201.13 (Subpart B) added; interim 3321
2201.21—2201.23 (Subpart C) Redesignated as 2201.31—2201.33 (Subpart D); interim 3321
2201.21 (Subpart C) Redesignated from 2201.11 (Subpart B); interim 3321
2201.31—2201.33 (Subpart D) Redesignated as 2201.41—2201.43 (Subpart E); new 2201.31—2201.33 (Subpart D) redesignated from 2201.21—2201.23 (Subpart C); interim 3321
2201.32 (c) introductory text revised; interim (effective date pending) 3321
2201.41—2201.44 (Subpart E) Redesignated as 2201.51—2201.54 (Subpart F); interim 3320
2201.41—2201.43 (Subpart E) Redesignated from 2201.31—2201.33 (Subpart D); interim 3321
2201.51—2201.55 (Subpart F) Redesignated as 2201.61—2201.65 (Subpart G); interim 3320
2201.51—2201.54 (Subpart F) Redesignated from 2201.41—2201.44 (Subpart E); interim 3320
2201.52 OMB number 3321
2201.53 Revised; interim 3320
2201.61—2201.65 (Subpart G) Redesignated from (Subpart F) 2201.51—2201.55; interim 3320
2202 Added; interim (effective date pending in part) 3322

1989

45 CFR

54 FR Page

Chapter XII
1229 Heading and authority citation revised 4965
Technical correction 6363
1229.305 (c) (3) and (4) amended; (c)(5) added; interim 4965
1229.320 (a) revised; interim 4965
1229.600—1229.630 (Subpart F) Added; interim 4965
1229 Appendix C added; interim 4965
Chapter XIII
1336.30 Regulation at 53 FR 23969 confirmed 3452
1336.60—1336.77 (Subpart F) Regulation at 53 FR 23969 confirmed 3452
1351 (Subchapter F) Subchapter heading and authority citation revised; nomenclature change 20854
1351.1 (c) and (j) amended; (k) through (p) redesignated as (j) through (o) 20854
1351.11 Revised 20855
1351.13 Revised 20855
1385 Authority citation revised 47984
1385.1 (b), (c), and (d) revised 47984
1385.3 Introductory text republished; amended 47984
1385.4 (b) and (c) revised 47984
1385.5 (b) revised 47984
1385.9 (a) amended 47984
1386 Authority citation revised 47985
1386.2 (a) revised 47985
1386.23 (c) revised; OMB number 47985
1386.30 (e)(4) revised 47985
1386.32 (a) revised; OMB number 47985
1386.33 (a) revised 47985
1386.35 (c) added 47985
1387 Revised 47985
1388 Heading revised 47985
1388.5 (f)(3) revised 47985
1388.9 Added 47985
Chapter XVI
1611 Appendix A revised 15945
1626 Authority citation revised 18111
1626.1 Revised 18111

45 CFR—Continued

54 FR Page

Chapter XVI —Continued
1626.2 (b) revised 18111
1626.3 Revised 18111
1626.4 (a) introductory text, (1), and (b) revised 18111
1626.5 (a)(5), (b)(1), (c), and (f) revised; (a)(6) removed; (b)(5) added 18111
1626.6 (a) introductory text, (3), and (b)(1) revised 18112
1626.7 (a) introductory text and (b) revised 18112
1626.10 (a) revised; (c) added 18112
1626.11 Added 18112
1626.12 Added 18112
1632 Added 31959
Chapter XVIII
1803 Added 4795
Chapter XX
2016 Added; nomenclature change 4735
Heading and authority citation revised 4965
Technical correction 6363
2016.105 (w) added 4735
2016.305 (c) (3) and (4) amended; (c)(5) added; interim 4965
2016.320 (a) revised; interim 4966
2016.600—2016.630 (Subpart F) Revised; interim 4966
2016 Appendix C added; interim 4966

1990

45 CFR

55 FR Page

Chapter XII
1214 Added 47761
1215 Revised 20153
Authority citation revised 50330
1215.10 Added 50330
1229 Regulation at 54 FR 4950, 4965 confirmed 21704
1229.305 Regulation at 54 FR 4950, 4965 confirmed 21704
1229.320 Regulation at 54 FR 4950, 4965 confirmed 21704
1229.600—1229.635 (Subpart F) Revised 21688, 21704
1229 Appendix C revised 21690, 21704
1230 Added; interim 6737, 6755
1232 Authority citation revised 52142
1232.15 (a) amended 52142
(b) revised 52143, 52138

45 CFR—Continued

55 FR Page

Chapter XIII
1340 Authority citation revised 27639
1340.1 (a) revised 27639
1340.2 (h) revised 27639
1340.10 Revised 27639
1340.13 (a) introductory text republished; (a)(2) revised; (c) removed 27639
1340.14 (a) revised 27639
1340.15 (a), (b)(1), (c)(1),(4), and (d)(1) revised 27639
1340 Appendix amended 27640
1351 Regulation at 54 FR 20854 confirmed; technical correction 5601
Effective date corrected 7967
1351.1 Regulation at 54 FR 20854 confirmed 5601
1351.11 Regulation at 54 FR 20855 confirmed 5601
1351.13 Regulation at 54 FR 20855 confirmed 5601
Chapter XVI
1611 Appendix A revised 12353
ChapterXVIII
1801 Revised 25940
ChapterXX
2016 Regulation at 54 FR 4950, 4965 confirmed 21704
2016.305 Regulation at 54 FR 4950, 4965 confirmed 21704
2016.320 Regulation at 54 FR 4950, 4966 confirmed 21704
2016.600—2016.635 (Subpart F) Revised 21688, 21704
2016 Appendix C revised 21690, 21704

1991

45 CFR

56 FR Page

Chapter XII
1228 Removed 47157
1235 Added 4732
Chapter XVI
1611 Appendix A revised 9634
1801 Revised 48076

1992

45 CFR

57 FR Page

Chapter XII
1224.1–19 Added 45326

45 CFR—Continued

57 FR Page

Chapter XIII
1301.2 Amended; eff. 10–14–92 41884
1301.20 (c) added; eff. 10–14–92 41884
1301.32 Revised; eff. 10–14–92 41885
1302 Authority citation revised 41887
1302.10 Revised; eff. 10–14–92 41887
1303 Revised 59264
1303.10—1303.23 (OMB number pending) 59264
1304 Appendix A removed 58092
1305 Revised 46725
1306 Added 58092
1355 Authority citation revised 30429
1355.20 Amended 30429
Chapter XVI
1611 Appendix A revised 8578
Chapter XX
Chapter XX Removed 29041
Chapter XXIV
Chapter XXIV Established 7322
2400 Added 7322
Chapter XXV
Chapter XXV Established 5299
2500 Added 5299
2501 Added 5302
2502 Added 5306
2503 Added 5307
2504 Added 5311
2505 Added 5314

1993

45 CFR

58 FR Page

Chapter XIII
1301.32 OMB number 26918
1303.24 Added; (OMB numbers) 13019
1304 Authority citation revised 5518
Nomenclature change 5518
1304.1–2 (a), (c) and (i) revised 5518
1304.3–3 (b) introductory text revised 5518
1305 Authority citation revised 5518
1305.2 (a) revised 5518
1308 Added 5501
1355 Authority citation revised 67924
1355.20 Amended 67924
1355.30 (e) revised 67924

45 CFR—Continued

58 FR Page

Chapter XIII —Continued
1355.40 Added 67924
1355.50 Added; interim 67945
1355.52 Added; interim 67945
1355.53 Added; interim 67945
1355.54 Added; interim 67946
1355.55 Added; interim 67946
1355.56 Added; interim 67946
1355.57 Added; interim 67946
1355 Appendixes A through F added 67926
1356 Authority citation revised 67938
1356.20 (b), (c) and (d) redesignated as (d), (e) and (f); new (b) and new (c) added 67938
1356.60 (c)(2)(x) and (d) added 67938
(e) added; interim 67947
1357 Authority citation revised 67938
1357.15 (h) added 67938
Chapter XVI
1602 Authority citation revised 52919
1602.2 Revised 52919
Regulation at 58 FR 52919 eff. date delayed to 10–2–94 65292
1602.4 Revised 52919
Regulation at 58 FR 52919 eff. date delayed to 10–2–94 65292
1602.5 Revised 52920
Regulation at 58 FR 52920 eff. date delayed to 10–2–94 65292
1602.6 Added 52920
Regulation at 58 FR 52920 eff. date delayed to 10–2–94 65292
1602.7 Revised 52920
Regulation at 58 FR 52920 eff. date delayed to 10–2–94 65292
1602.8 (a), (b)(3), (4), (5), (c) introductory text and (d) revised 52920
Regulation at 58 FR 52920 eff. date delayed to 10–2–94 65292
1602.9 (a)(2) and (6)(iv) revised 52921
Regulation at 58 FR 52921 eff. date delayed to 10–2–94 65292
1602.10 Revised 52921
Regulation at 58 FR 52921 eff. date delayed to 10–2–94 65292
1602.12 Revised 52921
Regulation at 58 FR 52921 eff. date delayed to 10–2–94 65292
1602.13 Revised 52921

45 CFR—Continued

58 FR Page

Chapter XVI —Continued
Regulation at 58 FR 52921 eff. date delayed to 10–2–94 65292
1611 Appendix A revised 12336
1612 Authority citation revised 21405
1612.2 Revised; eff. 10–2–93 21405
1612.3 (a) amended; (b), (e) and (f) revised; eff. 10–2–93 21405
1612.6 (a) revised; eff. 10–2–93 21405
1612.13 (b) and (d) revised; (e) and (f) added; eff. 10–2–93 21405
1626.4 (a) introductory text and (1) revised 6608
Chapter XXIII
Chapter XXIII Established 57698
2301 Added 57698, 57699
2301.170 (c) revised 57699
Chapter XXIV
2490 Added 57699
2490.170 (c) revised 57699
Chapter XXV
Chapter XXV Heading revised; interim 60981
2550 Added; interim 60981

1994

45 CFR

59 FR Page

Chapter XII
1207.1–2 Amended 15122
1207.3–1 (v) added 15122
1207.3–5 (a)(3), (4) and (c)(5) revised 15122
1208.1–2 Amended 15122
1208.3–1 (v) added 15122
1208.3–5 (a)(3), (4) and (c)(5) revised 15122
Chapter XIII
1355 Appendixes A, D and E corrected 13535
Appendixes A through D corrected 42520
1357.15 (h) corrected 13535
Chapter XVI
1601 Removed 21666
1602.2 Regulation at 58 FR 52919 withdrawn 49584
1602.4 Regulation at 58 FR 52919 withdrawn 49584
1602.5 Regulation at 58 FR 52920 withdrawn 49584
1602.6 Regulation at 58 FR 52920 withdrawn 49584

45 CFR—Continued

59 FR Page

Chapter XVI —Continued
1602.7 Regulation at 58 FR 52920 withdrawn 49584
1602.8 Regulation at 58 FR 52920 withdrawn 49584
1602.9 Regulation at 58 FR 52921 withdrawn 49584
1602.10 Regulation at 58 FR 52921 withdrawn 49584
1602.12 Regulation at 58 FR 52921 withdrawn 49584
1602.13 Regulation at 58 FR 52921 withdrawn 49584
1607 Revised 65254
1611 Appendix A revised 12550
Chapter XVIII
1801 Revised 43058
Chapter XXIV
Chapter XXIV Revised 27490
Chapter XXV
2510 Added 13783
2513 Added 13785
2515 Added 13786
2516 Added 13786
2517 Added 13790
2518 Added 13792
2519 Added 13792
2520 Added 13794
2521 Added 13794
2522 Added 13796
2523 Added 13804
2524 Added 13805
2525 Added; interim 30710
2526 Added; interim 30711
2527 Added; interim 30712
2528 Added; interim 30713
2529 Added; interim 20714
2530 Added 13806
2531 Added 13806
2532 Added 13807
2533 Added 13808
2540 Added 13808
2541 Added 41598
2542 Added 41614

1995

45 CFR

60 FR Page

Chapter XIII
1355.40 OMB number 40507
1355.50 Regulation at 58 FR 67945 confirmed 26839
1355.52 Regulation at 58 FR 67945 confirmed 26839

45 CFR—Continued

60 FR Page

Chapter XIII—Continued
1355.53 Regulation at 58 FR 67945 confirmed; (b)(3) amended 26839
1355.54 Regulation at 58 FR 67946 confirmed 26839
1355.55 Regulation at 58 FR 67946 confirmed 26839
1355.56 Regulation at 58 FR 67946 confirmed 26839
1355.57 Regulation at 58 FR 67946 confirmed 26839
1355.60 Regulation at 58 FR 67947 confirmed 26839
1355 Appendixes A, C and D amended 40507
appendix E amended 40508
appendix A corrected 46887
1357.40 Heading and (a) revised; (g)(6) added 28737
1397 (Subchapter K) Removed 26000
Chapter XVI
1607.5 (b) correctly revised 2330
1611 appendix A revised 10809
Chapter XXV
2541.360 (d), (g), (h) and (i) revised 19639, 19646
2542.10 Revised 33040
Revised; (b)(3) amended 33063
2542.20 Amended 33041, 33063
2542.30 (c) revised 33041, 33063
2542.100 Revised 33041
Revised; (a) and (c) amended 33063
2542.130 Revised 33041
Revised; amended 33063
2542.140 Revised 33041
Revised; (b) amended 33063
2542.150 Revised 33041
Revised; (a) amended 33063
2542 Appendixes A and B revised 33042, 33063
2543 Added 13055
2544 Added 28355

1996

(Regulations published from January 1, 1996, through October 1, 1996)

45 CFR

61 FR Page

Chapter XIII
1336.30 Heading revised; (a), (b) designation and (c) removed 42820
1336.33 Added 42820

45 CFR—Continued

61 FR Page

Chapter XIII—Continued
1336.34 Added 42821
1336.35 Added 42822
1370 (Subchapter H) Added 6793
1385.1 (a) and (b) revised; eff 10–30–96 51153
1385.3 Amended; eff. 10–30–96 51153
1385.4 Revised; eff. 10–30–96 51154
1385.5 Removed; eff. 10–30–96 51154
1385.6 Revised; eff. 10–30–96 51154
1385.7 Removed; eff. 10–30–96 51154
1385.8 Introductory text revised; eff. 10–30–96 51154
1385.9 (a) amended; (b), (c) and (d) revised; (e) added; eff. 10–30–96 51154
1386.1 Revised; eff. 10–30–96 51155
1386.2 (b)(1) and (c) revised; eff. 10–30–96 51155
1386.4 Removed; eff. 10–30–96 51155
1386.19 Added; eff. 10–30–96 51155
1386.20—1386.24 (Subpart B) Heading revised; eff. 10–30–96 51155
1386.20 Heading, (a), (d) and (e) revised; (f) added; eff. 10–30–96 51156
1386.21 Revised; eff. 10–30–96 51157
1386.22 Added; eff. 10–30–96 51158
1386.23 Revised (OMB number pending); eff. 10–30–96 51159
1386.24 Introductory text, (a) and (b) redesignated as (a) introductory text, (1) and (2); new (a) introductory text and new (1) revised; new (b) added; eff. 10–30–96 51159
1386.25 Added; eff. 10–30–96 51159
1386.30—1386.36 (Subpart C) Heading revised; eff. 10–30–96 51159
1386.30 (e) redesignated as (f); (a), (c)(1), new (f)(2) and (3) revised; (c)(3) and new (e) added; (OMB number pending); eff. 10–30–96 51159
1386.31 Heading revised; (a) through (d) redesignated as (b) through (e); new (a) added; eff. 10–30–96 51160
1386.32 Revised (OMB number pending); eff. 10–30–96 51160
1386.33 (a) revised; eff. 10–30–96 51160
1386.34 Added; eff. 10–30–96 51160
1386.35 Heading and (b)(1) revised; (d) and (e) added; eff. 10–30–96 51161

45 CFR—Continued

61 FR Page

Chapter XIII—Continued
1386.36 Heading and (e) revised; eff. 10–30–96 51161
1386.80 Revised; eff. 10–30–96 51161
1386.85 (a) revised; eff. 10–30–96 51161
1386.90 Revised; eff. 10–30–96 51161
1386.92 Revised; eff. 10–30–96 51162
1386.93 (c)(2) and (d) revised; eff. 10–30–96 51162
1386.94 (a), (b)(2) and (c) revised; eff. 10–30–96 51162
1386.101 (a)(11) and (c) revised; eff. 10–30–96 51162
1386.111 (c) and (d) revised; eff. 10–30–96 51162
1386.112 (a) and (b) revised; eff. 10–30–96 51162
1387.1 (a), (b) and (d) revised; eff. 10–30–96 51163
1388 Revised; eff. 10–30–96 51163
Chapter XVI
1610 Revised; interim 41962
1610.2 (b)(4), (9), (11), (12) and (14) added; interim 45741

45 CFR—Continued

61 FR Page

Chapter XVI—Continued
1611 Appendix A revised 12041
1612 Revised; interim 45745
1617 Revised; interim 41964
1620 Revised; interim 45749
1626 Revised; interim 45751
1627 Heading revised; interim 45754
Authority citation revised 45754
1627.2 (c) revised; interim 45754
1627.4 Revised; interim 45754
1627.7 Revised; interim 45754
1627.8 Revised; interim 45754
1632 Revised; interim 41965
1633 Added 14252
Revised; interim 41966
1634 Added 14258
1635 Added 14263
1636 Added; interim 45741
1637 Added; interim 45755
1638 Added; interim 45756
1639 Added; interim 45759
1640 Added; interim 45761
1642 Added; interim 45763
Chapter XXIV
2400 Revised 46734